

# Open Space

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**1865**

# Open Space

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## Cover story

Access is restored to the popular Castle Cove beach at Weymouth in Dorset, thanks to the efforts of our member the Friends of Castle Cove Beach. They lobbied and raised money for a new flight of steps which was opened ceremoniously on Easter Saturday (see page 2). Photo: Justin Glynn.



## Unhappy trigger

**Town and village greens have been dealt a further body-blow. The appeal court has outlawed the registration of land which is within a ‘settlement boundary’ as a green.**

Ever since the egregious Growth and Infrastructure Act 2013 introduced ‘trigger events’ which, in England, prevented greens registration on land with even a whiff of planning permission, the opportunities for registration have been curtailed. But this judgment, for 380 square metres of amenity space at Vowley View on the edge of Royal Wootton Bassett (RWB) in Wiltshire, will have a dismal impact.

### Frustrate

One of the trigger events is the identification of land for potential development in a development plan. RWB was included in the Wiltshire core strategy as a market town with development potential. The judges said that registration of the Vowley View land as a green ‘would frustrate the broad objectives of the plan’—even though the land had not been identified as a development site.

So now greens can be stolen from us behind our backs.

Unhelpfully, Lord Justice Lewison threw down the sop that land can instead be designated as local green space (LGS) but, as we explain on page 4, LGS is greatly inferior to a green. It provides neither rights of recreation nor permanent protection to land. And it can only be

designated when the neighbourhood or local plan is prepared or reviewed. It is no alternative to a town or village green.

It is now harder than ever for local people to protect the open spaces they have used and enjoyed for decades, despite government pledges.

Last year the government’s 25-year environment plan set a target: to ensure that ‘there are high-quality, accessible, natural spaces close to where people live and work’—but it is clear from the first-year progress report on the plan that little is happening. Government has announced a trivial £13.1 million to improve and create parks and green spaces in England. Austerity-ridden councils still struggle to maintain these assets.

### Accessible

The government pledged that new developments should include accessible green spaces, but is this happening? Although we have argued that such spaces should be registered as greens to secure them for ever, the idea has so far been ignored.

In fact, the 25-year plan failed to mention village greens at all, yet people have, by continuous use, voted with their feet to save their treasured spaces.

Now that the courts have sneered at greens so contemptuously it is vital that communities identify eligible land for registration before those spaces become (often surreptitiously) land for ‘potential development’.

**KJA**

# Access to Castle Cove beach

A six-year campaign by local people has restored public access to a popular beach in Weymouth, Dorset.

**On Easter Saturday, 20 April, some 500 residents celebrated the reopening of access to Castle Cove beach when a new flight of steps was unveiled (see front cover). This campaign was run by the Friends of Castle Cove Beach (FOCCB) backed by the Open Spaces Society. Tony Dobbs, a friends' trustee, tells the story.**

The steps down the steep slope are the only land access to Castle Cove beach, and the route is not recorded as a public highway. Weymouth and Portland Borough Council, which had been maintaining the steps since 1936, removed them in 2013 to stop people from using them. There had been subsidence which left the path surface uneven. The council claimed that it would cost £700,000 to shore up the cliff and restore access to the beach.

*Castle Cove beach in 1938.*

Local people protested and a year later Clare Sutton, the local Green Party borough councillor, delivered a 2,000-signature petition to the council, which it essentially ignored. Two months later about 70 people attended a public meeting at which FOCCB was established.

The friends formed a steering group and began researching the history of the steps. It established a Facebook group and list of supporters, and got in touch with interested parties including relevant landowners, council officers and councillors. The main aim at this stage was to generate public awareness and gather local support for a campaign to regain access.

The group amassed historic sources demonstrating extensive public usage





*Castle Cove beach on the day the steps were reopened. Photo: Tony Dobbs.*

going back over 100 years and it expanded public support through press articles, fund-raising events, newsletters and leaflets. It had no experience of running a campaign and it joined the OSS whose advice and support gave it the confidence to keep going, despite the many challenges en route.

Because the path down the steps was not on the definitive map of rights of way, the group had to collect evidence of use and apply for the route to be recorded as a public highway. It submitted an application for a definitive map modification order (DMMO) to Dorset County Council in October 2014 supported by 79 witness statements covering 70 years of use.

### Approved

In August 2017 the council officers recommended against the application but the councillors disagreed and approved it. The council made the DMMO but there were unresolved objections so the order has to be determined by the environment secretary. However, the land has already been designated as coastal margin to the England Coast Path, so the public has some rights of access here.

In 2015, following much discussion with interested parties, and meetings to try to establish mutually acceptable solutions, the steering group decided that the best approach was to lease a strip of land and rebuild the steps itself. To do this, it needed to become a recognised legal body, and so it applied for charitable status for FOCCB. This was granted in July 2016.

### Planning permission

It negotiated a 99-year lease with the landowner, and then obtained planning permission for the steps. It raised funds from local councils, businesses and residents, including about £5,000 from sponsorships of individual steps. The steps are wooden and are mounted on metal poles set into the side of the hill so that they can be dismantled and rebuilt easily, to take account of coastal erosion.

In total the project cost about £50,000 with uncountable hours of effort from the trustees and other volunteers.

The steps are already being well used and it is wonderful to see the beach being enjoyed once more. The final task is to see the path down to the beach added to the definitive map. □

# Taking action



## Securing open spaces

**Our case officer, Nicola Hodgson, advises how you can win open space as part of development.**

### Town or village green (TVG)

*Registration of land under section 15(2) Commons Act 2006.*

Anyone may apply to the commons registration authority to register land as TVG if a significant number of the inhabitants of any locality, or neighbourhood within a locality, have used the land as of right (without secrecy force or permission) for lawful sports and pastimes for 20 years. An application must be made within one year (two in Wales) of cessation of or challenge to use. The process relies on evidence of use from local people.

*Registration of land under section 15(8) Commons Act 2006.*

The owner of land may apply to the commons registration authority voluntarily to register the land as TVG. No evidence of use is required.

### Local Green Space (LGS)

*National Planning Policy Framework 2018 (paragraph 100), England only.*

The LGS designation is an alternative means of protecting land through the planning system. It enables local communities to secure green spaces of local importance. Sites may be designated for a variety of reasons including their setting and nature conservation benefits. The land must be in reasonable proximity to the community it serves and must not be extensive (not defined).

Local communities can identify LGS through the local and neighbourhood plan process. Land designated as LGS is protected in the same way as green belt. New development on such land is ruled out except in special circumstances.

### Comparison

The registration of land as TVG is superior to that of LGS because it gives permanent protection and ensures local people have the right to use the land for recreation.

The TVG is protected, under section 29 Commons Act 1876 and section 12 Inclosure Act 1857, from enclosure or damage. Nothing can be done there which interferes with the public's use of the land, unless it is for the better enjoyment of the green.

LGS is inferior because land can only be designated during the planning process and where this would not undermine investment in homes, jobs or essential services. The designation only lasts for the length of the plan and development can still take place if special circumstances are satisfied. The designation brings no new access rights. □



*Town green at Barnoldswick, Lancashire, which was voluntarily registered by the landowner, Pendle Borough Council.*

# 1949 and all that: part 2

We have pledged to protect our special landscapes on the seventieth anniversary of the act which designated them.

**Five of the organisations which campaigned for the creation of national parks in the 1930s and 40s reconvened in the Peak District in March. They pledged to continue campaigning for the parks' protection and to make access to them easier for everyone.**

The Campaign for National Parks (CNP), Campaign to Protect Rural England (CPRE), OSS, the Ramblers, and the Youth Hostels Association (YHA) signed the pledge on a day of seventieth-anniversary celebrations of the National Parks and Access to the Countryside Act 1949.

Despite their status, national parks face mounting threats from fracking, mining, quarrying, road building, military training and housing developments—to name a few. In addition, there is the challenge to make these splendid places accessible for all.

Our first action was to write to the *Our general secretary Kate Ashbrook signs the pledge with (left to right) Emma Marrington, CPRE; Tom Platt, Ramblers; Janette Ward, CNP, and James Blake, YHA.*



environment secretary Michael Gove, with celebrity signatories including our vice-president Richard Mabey, reminding him that the government, in its 25-year environment plan, promised to double the number of schoolchildren visiting the parks to 120,000 a year. We have said that the government should offer all schoolchildren opportunities to visit national parks.

This would honour the spirit of the 1949 act as well as the 25-year plan.

## Intention

It was certainly the intention of the national parks' pioneers that the parks should be enjoyed by all.

The 1949 act was introduced by the Labour government, the culmination of a long campaign by the OSS (then the Commons Preservation Society) and others. It was preceded by a series of government reports.

In 1931 a committee chaired by the Rt Hon Christopher Addison concluded that there should be a system of national reserves and nature sanctuaries, where the land was safeguarded, access for pedestrians was improved and flora and fauna were protected.

On 27 September 1934 our then secretary Sir Lawrence Chubb argued at the Nature Lovers' conference in Llanberis that Snowdonia should be designated a national park, and for the owner of Caernarvonshire's extensive commons (28,102 acres) to designate the land for public access under section 193 of the Law of Property Act 1925. ▷▷



*The Aberglaslyn near Beddgelert, Snowdonia National Park.*

The Addison report was spurned, the feeble government considering that its ideas were unnecessary. During and after the war the government was more supportive. It commissioned further reports. The first was by John Dower in 1945 which made the case for national parks and identified a number of them. Next, a committee chaired by Arthur Hobhouse (1947) advised on the legislation, and added conservation areas. These became the areas of outstanding natural beauty (AONBS) in the 1949 act.

## Parochialism

National parks were defined in the act as areas of natural beauty which afforded opportunities for open-air recreation. Ten were designated in England and Wales between 1951 and 1957. The Broads was added by special legislation in 1988, and finally the New Forest and South Downs joined the family in 2005 and 2010 respectively—bringing the parks closer to more people in a geographical sense.

It was anticipated that the parks would have their own independent authorities, but unfortunately the legislation did not require this, and although the first to be designated, the Peak District, did have an autonomous authority, nearly all the rest became subcommittees of county councils and were often subject to parochialism and lack of resources. It was not until

1997 that all the national park authorities became independent.

Throughout this time the cause of national parks has been championed by the feisty Campaign for National Parks, the successor of the Standing Committee on National Parks which was established in 1936.

The AONBS (now 38) fared less well, being treated, wrongly, as second-class citizens, governed by committees which are only advisory, and having no pressure group to represent them as an entity.

They were beefed up by the Countryside and Rights of Way Act 2000. The environment secretary or Welsh ministers may create conservation boards, enabling the AONB to take some of the duties and responsibilities from the local authorities. Such boards have been established in the Chilterns and Cotswolds. A duty was placed on public bodies to 'have regard to' AONB purposes, similar to that for national parks—weak, but a start.

The AONBS remain desperately dependent on the goodwill of their local authorities and, as many are close to towns, development is a constant threat.

We now await the report from the latest government review into designated landscapes in England, led by Julian Glover. We fervently hope that this will result in a better deal for our treasured places in their seventieth year. □



*The rambler's church at Tealby in the Lincolnshire Wolds AONB.*



## Leigh Common

**In the last issue of *Open Space* (page 9) we reported that we had challenged the decision of Dorset County Council (now unitary Dorset Council) to deregister strips of Leigh Common, part of the highway adjoining Leigh Road at Coleshill near Wimborne, and amounting to about 1.3 hectares.**

Our principal objection was to the council's conclusion that it had made a mistake in registering this land as common in the first place. We considered that it was not the registration authority's function to decide what to register, its duty was to give effect to an application for provisional registration.

On considering our pre-action protocol letter, the council agreed with us. That should have meant that its decision was quashed and that the matter would have to be redetermined by the council. But one of the developers, BDW Trading Ltd, has refused to accept the council's decision and intends to fight the matter in court.

We are pursuing this as it raises important issues as to whether the law allows highways to be registered as common. Happily the high court has granted leave for our claim.

*Thank you to everyone who has generously donated to our appeal to finance the case.*

## Flaxton Green

North Yorkshire County Council has recently determined two applications to deregister commons and greens.

James Hudson applied to deregister about 6.8 hectares at Flaxton Green in North

Yorkshire, eight miles north-east of York.

The land was provisionally registered as common on an original application made in January 1968 under the Commons Registration Act 1965. Flaxton Green forms an upside-down L-shape: the present application land lies within the corner of the L. Unlike most of the green the application land has been enclosed since at least the mid-nineteenth century.

The application was made under paragraph 7 of schedule 2 to the Commons Act 2006. Paragraph 7 enables the applicant to succeed if it can be shown that, at the time of provisional registration, the land was not common, waste of a manor, town or village green, nor any other land with commonable or shared rights. But paragraph 7(2)(b) provides that deregistration is admissible only where 'the provisional registration of the land as common land was not referred to a commons commissioner under section 5 of the 1965 Act'.

## Hearing

In this case, the provisional registration of CL54 was referred. But the hearing before the commissioner was caused by an objection to the registration of a different part of the common, not the application land, and the objection failed.

The society objected to the application, citing *Re West Anstey Common* [1985] Ch 329, in which the court of appeal found that the objection to the registration of one part of the land put into question the alleged status as common of the whole of the land registered.

Accordingly, an application under paragraph 7 must be excluded where the

provisional registration of any part of the land had been before the commissioner.

In a report to the planning and regulatory functions subcommittee, officers agreed with the society's submissions, but also found, on the evidence, that the other criteria for deregistration would have been satisfied. The committee approved the officer's recommendation that the application should not be granted.

This is a welcome decision: it upholds the principle underlying paragraph 7 that it is available only in cases where the provisional registration of the land was not referred to a commissioner, so that its appropriateness for registration has never been reviewed.

### Jimmy's Field

North Yorkshire County Council has granted an application to deregister Jimmy's Field, a village green of less than 0.1 hectare in Crackpot, Swaledale. Jimmy's Field is just north of the road junction in the hamlet of Crackpot, at SD973966. The application was made by Grinton and Ellerton Abbey Parish Council under paragraph 9 of schedule 2 to the Commons Act 2006. We objected.

It is almost impossible to demonstrate whether land was rightly registered as a green some half century ago, because user evidence cannot be recalled after such a lapse of time.

Paragraph 9 provides instead for the *Jimmy's Field*. Photo: Google streetview.



applicant to show that 'throughout the period of 20 years preceding the date of its provisional registration the land was, by reason of its physical nature, unusable by members of the public for the purposes of lawful sports and pastimes'. The applicant must also show that the land was not a recreational allotment under an inclosure award.

The parish council, apparently acting as a postbox for the landowner, said that the field was unusable by the public because it was poorly drained and often boggy. It said that there was no access across the wall directly onto the registered green (but of course, it was possible to enter the field elsewhere). It supplied a jumble of evidence about tithe and inclosure awards, but with no adequate explanation.

### High hurdle

We said that the paragraph 9 criteria were intended to set a high hurdle, and that for land to be unusable, it must be incapable of use throughout the 20-year period: eg because it is a bog or built over. A pasture, however wet, did not meet the test. We were also unconvinced that we had seen sufficient information to cover all the inclosure awards affecting the area.

In their report to the planning and regulatory functions subcommittee, officers said that 'climbing over the walls ... itself renders the land unusable by members of the public', and 'that the application site was for significant lengths of time too wet to be used for recreational pastimes'. The inclosure award of 1841 was seen as sufficient evidence in itself that there was no allotment. The recommendation to grant the application was accepted.

This is a worrying decision. The land was obviously accessible, albeit—so far as the walls allow today—only by trespassing through a nearby gate. We consider that the parish council failed fully to research and explain the land's history of inclosure. □



## Better access in Wales?

The Deputy Minister for Housing and Local Government, Hannah Blythyn, has made an announcement about improving public access in Wales. This follows the government's consultation in 2017 to which there were more than 16,000 responses.

She extols the benefits of an accessible countryside, and the importance of supporting rural areas to maximise revenue from tourism. She will 'progress significant changes to access rights and facilitate an assumption of non-motorised multi-use on access land and the public rights-of-way network', and provide more opportunities for cyclists and horse-riders close to where they live.

Because these matters are complex, she intends to establish an independent Access Reform Group to look at the detail. With our expertise in access matters we hope to serve on it.

We trust that the minister will soon bring forward legislation to repeal the 2026 definitive-map closure, which was uncontroversial in the 2017 consultation. While we consider it to be premature to celebrate significant increases in access rights, her statement is encouraging.

## Fylingdales fence rejected

We are delighted that a proposal for fencing across splendid moorland in the North York Moors National Park has been rejected.

Planning inspector Martin Elliott has refused consent to the Manor of Fyling Court Leat, under section 38 of the Commons Act 2006, to erect more than five kilometres of fencing enclosing

Stony Marl, Howdale and Brow Moors, part of Fylingdales Moor.

The applicant wanted to graze livestock but was deterred from doing so because the common is open to the A171 road.

We objected because the fencing would damage the natural beauty of the moor and interfere with people's rights to walk there. There was also a risk that it would restrict access to two bridleways (one pictured below) and two footpaths on the common.

Natural England and the North York Moors National Park Authority had also expressed concern, the park authority saying that 'the unfenced nature of the moorland in the North York Moors is one of the national park's special qualities and part of the area's distinctive character'.

The inspector concluded that 'the fencing will have a significant adverse effect on public rights of access and the landscape'.

The benefits arising from the fencing did not in his view outweigh the disbenefits. ▷▷

*The view west south west along the bridleway across Stony Marl Moor from grid reference NZ969011. Photo: © T W Eyre, Creative Commons Licence.*



We are relieved that the inspector agreed with us that this fencing was unacceptable.

### Forder frustration

Our member Colin Brown is an extremely patient man. He has waited for more than 11 years for Cornwall Council to determine his application to register a small piece of land alongside Forder Creek, near Saltash, as a village green.

Colin submitted his application in February 2008, supported by 146 residents. In July 2010 the council decided to hold a non-statutory public inquiry 'as soon as possible'. However, this has never taken place, and for the intervening nine years the council has prevaricated and even issued a draft decision not to register the green, without holding an inquiry.

Colin complained to the local government ombudsman (LGO) four times. It has concluded that the council has been at fault for continual delays, and for failing to keep Colin updated on the status of his application, which it agreed to do every two months following his second complaint to the LGO in January 2014.

On 25 April the LGO concluded that Colin had suffered some injustice from

the 'protracted delays and inaction', including the deaths during the intervening period of some of his witnesses, such as the ex-mayor of Saltash who had used the land for 70 years.

The LGO recommended that the council must make a decision on whether to hold a public inquiry within two months; apologise to Colin and provide a written update once a month on the status of his application, and pay him £600 in compensation for the uncertainty he has suffered and for his time and trouble in making the complaint. The council should consider the report at a council meeting and decide what action to take.

We hope that Colin will come to our AGM on 11 July to talk about his campaign—and that the green will soon be registered.

### Estuary walk is best

Despite our representations to Natural England (NE) in 2016 to extend the England Coast Path on both sides of the Hamble estuary in Hampshire (OS spring 2017 page 9), NE still favours an inferior plan. NE, which is defining the route of the path, proposes to rely on the privately-run Hamble-Warsash ferry to provide a suitable crossing point. ▷▷

*Left: Forder fête: train rides on the land claimed as a green; the driver is Pat Crawford, one of the witnesses. Sadly, he died last year. Right: Saltash schoolchildren on one of their regular organised visits enjoy the open space. Photos: Colin Brown.*





*Left: Bursledon from the Hamble River Valley Forum's proposed route. Right: by the River Hamble at Warsash. Photos: Ian Underdown.*

We support the Hamble River Valley Forum in arguing for the path to be extended on both sides of the estuary, crossing the river on the footpath alongside the A27 road bridge.

While the ferry is an enjoyable alternative, it should not be the official route. It has no timetable, relying on passengers using a mobile phone to call it; it is inaccessible several times during the year due to high tides; it cannot operate in all weather conditions; it is difficult to gain access to it, and it is not viable financially during the winter. It is therefore unsuitable as the sole means of crossing the estuary and could leave walkers stranded.

The routes along the estuary would provide an attractive walk with a permanent crossing. We hope NE will see the sense of this.

### **Pendarves Wood**

Pendarves Wood near Camborne in Cornwall remains on the commons register thanks to a decision by the Planning Inspectorate.

The landowner, Karen Sumser-Lupson, applied to deregister the common under paragraph 7 of schedule 2 to the Commons Act 2006. The land was registered in 1968. The applicant had to show that, at the time of provisional

registration, the land was not, among other things, common land, waste of a manor or town or village green.

We did not object because we could identify no rational basis for the original registration. The evidence showed that the land was neither common nor waste of the manor at the date of provisional registration. However, there was only

### **Our AGM**

**Come to our AGM on 11 July. Details are enclosed with this *Open Space*.**

limited witness evidence that the land was not, at that date, a town or village green.

Cornwall Council referred the application to the Planning Inspectorate and an inquiry was held by inspector Mark Yates. The inspector was presented with evidence of around 25 people who had used the land for recreation between 1948 and 1968, and found it 'supportive of widespread use by others'.

The inspector considered that the evidence failed to show that the land was not a green prior to provisional registration. He also found that enclosure by estate walls, and use as a plantation, meant that the land was not waste of the manor prior to provisional registration—but for the application to succeed it had to be proved to be neither a common nor a green, and it was therefore refused.

## We save school bridleway

**We have helped to save a 935-metre section of public bridleway across the grounds of Christ's Hospital School near Horsham in West Sussex.**

Our local correspondent for Mid Sussex District, Paul Brown, and society member Ruth Fletcher (of the Horsham District Cycling Forum) were among the objectors who fought the change at a public inquiry last July. Other opponents were Horsham District Council and local residents.

### Popular

The school had applied to West Sussex County Council to divert the popular route across the playing field to a longer, inferior, path around the edge. The council agreed to make a diversion order using the special legislation for moving paths on school land (section 119B of the Highways Act 1980).

The principal test which such an order must meet is that it is expedient to move the path to protect pupils or staff from 'violence or the threat of violence, harassment, alarm or distress arising from

*The existing route of the bridleway.*



unlawful activity, or any other risk to their health or safety arising from such activity'.

However, the school must also be able to demonstrate that it has taken appropriate action to mitigate such risks, and that the diversion of the path would lead to a substantial improvement in that security.

We argued that even if the bridleway was to be diverted, there would be no substantial improvement in school security and that the number of incidents at the school dating back to 2010 was insignificant. The evidence presented confirmed that the area had a low incidence of crime.

### Lack of incidents

Speaking at the public inquiry, many residents who were path users confirmed the lack of incidents. Improvements to security had been implemented and more were planned, including an extension to the CCTV systems.

The inspector, Susan Doran, agreed with the objectors and refused to confirm the order because she did not consider it would result in a substantial improvement in security. In reaching her decision, she also considered the implications of the National Planning Policy Framework which advocates the protection and enhancement of public rights of way and better facilities for users.

Comments Paul: 'The school failed to provide evidence that the diversion was necessary. The alternative route was disadvantageous to users, particularly walkers and cyclists. They would have been constrained to a narrow, hedged path with restricted views, having lost the way

across a spectacular open space. We are pleased the order has been rejected.' (Ref ROW/3186991, 25 Sep 2018)

## Portishead paths

In August 2014, no one could have predicted that the act of barring access to land known as Portishead golf course would result in four years of hard work to preserve a green space for the benefit of residents and visitors.

Portishead is on the Severn estuary, 12 kilometres north-west of Bristol; the golf course is by the shore.

The tenant of the golf course, Portishead Golf for All, submitted a planning application to redevelop the site and reserve it for the exclusive use of paying golfers. Its plans involved dumping 16,000 cubic metres of landfill there. The application was endorsed by Portishead town councillors and approved in June 2015 by North Somerset Council (NSC) which is also the landowner.

### Locked

In August 2014 the tenant locked the gate which people had used to gain access to the land.

The community, led by Ann Townsend and Janet Davey, was outraged. They developed an online petition which attracted a large number of signatures, providing a clear mandate for their fight.

Part of the problem for the organisers was knowing where to start. Fortunately, a councillor in a neighbouring parish recommended they contact the OSS, and Ann became a member.

Following discussions and advice from the society the residents formed a small campaign group and agreed a course of action.

Experts within the community offered their time free of charge to write geological and ecological reports and to provide a wealth of historical



*Ann Townsend (left), Janet Davey and some of the supporters celebrate the recording and waymarking of the paths. Photo: Mark Atherton.*

information. Community members organised a walk over the land and a symbolic chaining of the leaders to a set of adjacent railings.

In October 2015 the group put in applications for two public footpaths across the site, one (590 metres) running east-west, parallel to the shore, and the other (135 metres) north-south linking with the main road.

The council did nothing with the applications so the group appealed to the environment secretary. Consequently, on 26 August 2016 planning inspector Heidi Cruickshank directed the council to determine the applications by 28 February 2018.

The council resolved, on 24 January 2018, to make the order for the paths. The order was published in July 2018 and confirmed as unopposed in November 2018. The developer abandoned the plans and the land was saved.

Says Ann: 'Finally, after a long campaign and overcoming obstructive councillors and NSC officials, the public right of access has been recognised and the development stopped. These two paths will secure access for ever. This has been a triumph for our community members,

and our thanks go to the Open Spaces Society which provided clear and concise guidance.'

### **Postponing the cut-off**

With other user bodies we have written to Michael Gove, Secretary of State for Environment, Food and Rural Affairs, asking him to postpone the cut-off date of 1 January 2026 for the extinguishment of unrecorded historic rights of way in England.

The letter was sent from the British Horse Society (BHS), Byways and Bridleways Trust, Land Access and Recreation Association, OSS and the Ramblers. We explained that circumstances since the cut-off date was set, by the Countryside and Rights of Way Act 2000 (CROW), have changed beyond recognition.

### **Pledged**

The late Michael Meacher, the minister at the time of the passage of CROW, pledged that significant resources would be found for claiming paths, but this did not happen. The Deregulation Act 2015 which streamlines the claim process, has still not been implemented.

The intention was to review the implementation of the provisions in 2015, 11 years before the cut-off, but any review would now be too close to that date to be of any use. Furthermore, local authorities have much reduced resources now for processing claims.

We have suggested a postponement to 2031, for which there is already provision in section 56 of CROW. We await a reply.

### **Cornwall comes up trumps**

On 15 February Cornwall Council wrote to Mr Gove also calling for the cut-off to be postponed to 2031 (or even 2051), and praising the work of volunteers from the BHS, OSS and the Ramblers. It would be helpful if other surveying authorities could back Cornwall.

Coincidentally, on 2 April shortly after we had written to Mr Gove, our vice-president Tony (Lord) Greaves led a debate in the House of Lords 'to ask Her Majesty's Government what assessment they have made of the progress that has been made in the registration of historic rights of way and of the benefits of extending the cut-off date for their registration'. With the BHS and the Ramblers we sent a briefing for the debate.

Ten peers spoke, seven in favour of postponement or revocation of the cut-off and three against.

### **Responding**

Responding to the debate, government whip Baroness Vere of Norbiton agreed to look at the cut-off date with the stakeholder working group (of which our general secretary is a member), but she said the government would not repeal the relevant sections of CROW.

It was useful for these matters to be debated and we are grateful to Tony for initiating this. We shall not let the matter drop.

### **Industrious Owen**

Our local correspondent in south Herefordshire, Owen Morgan, has been beavering away for the last 30 years with applications to add paths to the definitive map—but the council is taking its time to determine them.

In December 2018 a path for which Owen had applied in 2003 was finally confirmed. This is the addition of a half-mile byway open to all traffic in Brockhampton, five miles north of Ross on Wye. The route connects the B4224 and C2272 roads, running north-south.

The council made the modification order in 2017 but there were six objectors (all represented by one solicitor) and so the order went to the Planning Inspectorate for decision.

The inspector Paul Freer reviewed



*From the claimed path on Cefn Hill Common (SO277382), looking south west to Hay Bluff and the Black Mountains. Photo: © Philip Halling, Creative Commons Licence.*

Owen's thoroughly-researched evidence for the route.

It was marked on many Ordnance Survey maps; incomplete wording on the extract of the Brockhampton tithe map appeared to read "To Hereford"; and it was shown on auction sale plans for the Brockhampton Estate in 1869 and 1890; and on the Finance Act map of 1910.

### Special review

Herefordshire Council said that the order route was not included in the first definitive map because at that time it rejected routes which were used by vehicles.

The 1968 Countryside Act introduced a special review of the definitive map and statement, and this route was shown on the draft. The review was overtaken by the Wildlife and Countryside Act 1981 at which point claimed routes which were not subject to objection should automatically have been included on the definitive map. By an oversight, this route was omitted.

After considering the objections the inspector ruled that there was nothing in the evidence submitted by the objectors and affected landowners that casts

significant doubt on the documentary evidence provided by the council'. He was therefore satisfied that, on the balance of probability, a public vehicular right of way existed.

### Retrospective

Although the Natural Environment and Rural Communities Act 2006 had extinguished vehicular rights on routes with retrospective effect, the relevant date for such extinguishment was 20 January 2005 and this application had been made on 21 May 2003. Therefore, the vehicular rights were saved and the route has been added to the map as a byway open to all traffic. (Ref ROW/3196026, 29 Aug 2018)

### A five-mile addition

Another route for which Owen applied in 2002 has been added, without objection, to the definitive map. This is in the parishes of Craswall, Dorstone, Cusop and Michaelchurch Ecsley on the east side of the Black Mountains in Herefordshire. It crosses the registered common land of Cefn Hill (pictured above).

The route has been recorded as part bridleway, part restricted byway, a magnificent five miles long. Users have reason to be very grateful to Owen.

## York to pull its socks up

Our member Graham Cheyne complained to the local government ombudsman about the City of York Council's failure to comply with a direction from the secretary of state to make a definitive map modification order (DMMO) adding a public footpath to the definitive map of rights of way.

In 2012 Graham applied for a DMMO to add a footpath in Fulford parish, on the south side of York. Two years later, the council having done nothing, he applied to the secretary of state with the result that the council was directed to decide the application within 12 months.

### Resolved

Nearly two years later, in 2016, the council resolved not to make the order. Graham appealed against this, and another inspector directed the council to make a DMMO but without a deadline. Nothing happened and when Graham contacted the council it suggested, outrageously, that it would be 29 years before it could make an order.

Graham complained to the ombudsman who has ruled that the council must, within three months (ie by 9 August), start and finish a review of its DMMO service with the aim of reducing the backlog, and within a further month report the findings to councillors and seek their approval for any changes required. Within a further two weeks it must inform Graham when it expects to be able to

*Left: new sign on Burwash footpath 19. Right: no sign on the footpath through County Hall, Lewes.*



make the order on his DMMO application, and it must write to other DMMO applicants updating them on any changes in the service and giving a time frame for determining their applications. We hope this will make a difference.

If you appeal against a council's decision to refuse to make a DMMO, always ask the secretary of state to impose a time limit.

## East Sussex steps up

We are pleased that East Sussex County Council has responded to pressure from path campaigners and has replaced missing signposts on many public paths.

Our local correspondents and other members reported missing signposts early in 2018, as part of the campaign to mark the fiftieth anniversary of the Countryside Act 1968 which introduced a duty on highway authorities to erect signposts where public paths leave a metalled road. East Sussex has responded by erecting new signposts in Burwash, Hartfield and Withyham, to name a few parishes.

However, we know of at least one missing signpost which our Lewes correspondent, Chris Smith, has reported, and has still not been replaced—the footpath through the grounds of County Hall in Lewes where the public rights-of-way team is based!

We have written again to the rights-of-way office and were told it will be dealt with. We shall keep an eye on that. □



# Welcome to Tara-Jane and Nichola

Tara-Jane Sutcliffe has joined our board of trustees as a co-opted member. Having considered the attributes they needed, the trustees advertised for one or two members who, between them, had a knowledge of Wales, and expertise in law and marketing.



Tara (pictured above) applied and the trustees co-opted her in March.

She is the executive director of the Cardiff-based international volunteering charity UNA Exchange, responsible for risk, performance and financial management. She has skills in advocacy, and experience of contributing to cross-party working groups, parliamentary inquiries and government consultations with both the UK and Welsh governments.

With a background in landscape archaeology and cultural heritage, Tara is keen on access to the natural and historic environments. She will bring a new outlook to our deliberations and we are delighted to welcome her to the board.

## Our digital world

We have created a new post of digital marketing and content manager and appointed Nichola Finan to the role.

For almost four years Nichola has been working for the society as part of our team of digital specialists, building up

knowledge of our campaigns and of the conservation charity sector.

Nichola will continue to develop the society's digital presence, on Facebook, Twitter and other communication channels.

Nichola has a marketing-agency background, running various charity and commercial campaigns. She has a particular interest in the health and well-being benefits of spending time outdoors. She does voluntary work with children and families at her local NHS hospital and is a keen runner and club tennis player in Cheltenham.

The society recognises the need to inspire and serve its 10,000 supporters, through the website, social media and regular e-newsletters, and to convert as many as we can to members.

## New website

We launched our new website, [www.oss.org.uk](http://www.oss.org.uk), in April; it was designed after extensive user and market analysis to understand what topics, campaign news and questions were the most popular. The website will reflect these needs and provide its visitors with a contemporary and satisfying experience. We shall continue to study its use to inform further improvements and to generate new members. □



Nichola Finan

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.

## Officers and Trustees

**Chairman:** Chris Beney

**Vice-chairman:** Jean Macdonald

**Treasurer:** Steve Warr

**Trustees:** John Hall, John Lavery,  
Chris Meewezen, Tara-Jane Sutcliffe

**General secretary  
and editor:**

Kate Ashbrook

**Case officers:** Hugh Craddock, Nicola Hodgson

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Local organisations; parish, community and town councils: £45.

National organisations; district and borough councils: £165.

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Registered charity number 1144840



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