

Open Space

Autumn 2016

Vol 31 No 7



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 Open
Spaces
Society

Campaigning since
1865

Open Space

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Cover story

Ely footpath 50, unlawfully closed by Network Rail. This path crosses the Ely to King's Lynn railway line and connects to the popular Bishop's Way circular route. Network Rail has closed a number of paths in the vicinity without following the procedures and the society has complained to Cambridgeshire County Council (see page 15). Photo: Alysoun Hodges.



Access means Access

Whatever we may feel about leaving the EU it does provide a chance to rethink our agricultural-support systems, and to devise a scheme which favours public access.

Lord Gardiner, in his reply to our letter to the Prime Minister (see page 9), said: ‘We will be looking to develop a new approach to supporting agriculture and protecting our precious countryside including issues around cross compliance on rights of way’. We want to help him.

The EU pays British farmers up to £3 billion a year, of which £600 million (20 per cent) is for environmental protection. Of course this is all public money which should pay for public goods. Various amenity groups have piled in with their proposals for low-intensity farming and habitat and countryside protection—but what about public access?

Ring fenced

In the new regime, we argue that there must be payments for access which are ring fenced (the government claims not to like ring fencing, but the post-Brexit world will have new rules).

These payments should be available to landowners who offer new, useful, freedoms—whether on paths or access land. Ideally this will be permanent, consisting of definitive rights of way, or land dedicated for access under section 16 of the Countryside and Rights of Way Act 2000 or as a village green.

Payments should also be made to improve

existing access: farmers could pledge to mow headland routes, leave cross-field paths uncultivated, or provide new access points on open country.

Any farmer receiving grant whose public paths are not kept in good order, or whose access land is inaccessible, will have payments deducted. The money will be returned to the national access pot for use elsewhere.

Cross compliance

Currently, although there are cross-compliance rules for public rights of way (see Defra’s *Good Agricultural and Environmental Conditions* page 23), it is difficult to get anything done. You can report the breach to the Rural Payments Agency for use when it carries out one of its vanishingly rare inspections. But if a path has not been reinstated after ploughing it will almost certainly not be seen in time—a useless instrument.

Power to dock grants must therefore be transferred to highway authorities who must visit reported sites at once. And no longer should the rules apply only to ‘visible’ paths, an absurd limitation.

Some of the access pot could be used to ensure that highway authorities have sufficient staff to carry out the necessary checks; this will give value for money because it will encourage farmers to keep paths clear which will in turn reduce the local authorities’ burden.

If ‘Brexit means Brexit’, Prime Minister, ‘Access means Access.’

KJA



Updates from the courts

The judicial review of Wandsworth Council's decision to allow the Formula E motor race in Battersea Park has been withdrawn. (See OS summer 2016 page 7.)

At the last minute the appellant (who was supported by the Battersea Park Action Group) withdrew his action following assurances from the council. These remain confidential but the principal one was that, after this year, the event would never be staged here again.

While we are pleased with the outcome we are sorry that the court had no chance to state that the race was contrary to the Greater London Parks and Open Spaces Order 1967 (which outlaws events which occupy more than one-tenth of the space).

However, we have another chance. The Friends of Finsbury Park are appealing against Mr Justice Supperstone's judgment in the high court that the London Borough of Haringey was entitled to authorise the Wireless Festival in Finsbury Park. We have asked the court for leave to join the appeal, to argue that the 1967 order does not permit this.

Village greens

Two high court judgments could have a fundamental effect on people's ability to register land as town or village green. In both cases landowners have challenged decisions to register land as greens, on the grounds that the use for recreation was incompatible with the purposes for which it was held.

The application by our member Janine Bebbington, to register land at Moorside Fields in Lancaster, was approved by a

planning inspector. The landowner, Lancashire County Council in its role as the education authority, appealed to the high court.

Mr Justice Ouseley upheld the registration, arguing that use of the fields for educational purposes did not conflict with the public's use as a village green. (*Lancashire County Council v Secretary of State for the Environment, Food and Rural Affairs and Bebbington*, [2016] EWHC 1238 (Admin).)

Incompatible

At Leach Grove Wood, Leatherhead, Surrey County Council decided to register land as a green. The landowner, NHS Property Services Ltd, appealed to the high court. Here Mr Justice Gilbert upheld the appeal, concluding that the purposes for which the NHS held the land were incompatible with recreational use.

However he averred that there was no general principle that land owned by statutory bodies was immune from registration.

Neighbourhood

He also said that the test of 'neighbourhood' (the area from which users of the green come and which applicants are required to define) is a subjective, 'impressionistic' one of which the council committee, as decision-maker, has as much experience as an inspector. (*R (on the application of NHS Property Services Ltd) v Surrey County Council and Another*, [2016] EWHC 1715 (Admin).)

Both cases, which are reported on our website (<http://bit.do/czCpL>), are likely to be appealed. □

Case officer's diary

Our case officer Nicola Hodgson gives a snapshot of her work for the society, both in and out of the office.

As case officer for commons, greens and open spaces over the last 17 years I have experienced a huge volume and variety of issues and shared some of the frustrations, challenges and successes of members of the society.

In my daily contact with members and other organisations, the range of inquiries and difficulties is still a surprise, even after all those years. It may be a simple question about the size of a map required for a village-green application, but it might be a thick bundle of documents to be assessed when objections have been submitted to a green application, or I may need to review new court cases to ensure up-to-date information is on our website.

Evidence

People often cannot accept that they do need to provide evidence to satisfy the statutory criteria to make a village-green application; they understandably (but wrongly) believe that it should be registered simply because it is there.

Open-space concerns extend from planning applications to proposals for court action; all require research and careful analysis to determine whether it is appropriate for the society to intervene.

I have seen an increase in inquiries about local green spaces (LGS). This designation started as a proposal for statutory protection for open space to mitigate the dreadful restrictions on village-green applications in the Growth and Infrastructure Act 2013. But there is little national guidance and nothing to stop a planning application from being made before an LGS is designated.

Now members can refer to my tool kit which offers guidance on designation (see our website <http://bit.do/cArFN>). That is often the way with my job—I only realise that a guidance note or case summary is needed when I have already answered lots of queries individually.

Happily, in Wales the position is different and I spent a great deal of time putting together a brief and gave evidence to the environment committee when the Welsh planning bill was being considered. The hard work paid off and the Planning (Wales) Act 2015 is not as damaging as the 2013 act in England.

In fact in Wales the village green provisions have still to be brought into force; I encourage all those in Wales who have evidence to satisfy the criteria to register land as a village green to make an application sooner rather than later. Next year may be too late.

In addition to my case work I represent the society on several external bodies. One of these is the National Common

Queen's Crescent Garden, designated as LGS in the Exeter St James neighbourhood plan. Photo: Aylwyn Bowen.





National Common Land Stakeholder Group members on Ulpha Moor, Cumbria.

Land Stakeholder Group hosted by Defra, which was set up to assist and advise on the implementation of the Commons Act 2006.

Our last meeting in Kendal ended with a field trip which included a visit to Ulpha Moor, common land managed under a countryside stewardship scheme. Cattle grazing has been introduced without the need for obtrusive and restrictive fencing; instead cattle-grids have been installed. The land is completely open and a wonderful example of an unenclosed common which the public can explore without physical impediment (save for the steep climbs).

Tensions

However, discussions with local farmers revealed that there were clearly tensions between their plans and the restrictions imposed by Natural England. The visit also highlighted the reliance of local farmers on payment from countryside stewardship schemes. The impending changes and uncertainty as a result of Brexit were a huge concern to them.

The common-land issues I deal with daily include complaints about cows, encroachments, community involvement in consultations about the management of land, and applications for works on commons, and deregistration and

exchange land under sections 38 and 16 of the Commons Act 2006 respectively.

Many of these seem straightforward, but common-land proposals are seldom simple and we need fully to understand the background before being able to comment. So time will be needed to research the registration, existing management arrangements and access rights—often even the applicants don't understand the true position.

One recent applicant for consent for works had overlooked that it had authority to proceed under the scheme of management, and did not need consent. Another made an application for enclosure despite our correct advice that the scheme for his common prohibited it.

I run training days, usually for groups of local councils, which have proved popular in helping people through the complexities of the law and practice of common land, village greens and open spaces. We make a charge for our time and travel, but this is reduced for members of the society.

Legal strategy

I am also involved with the Wildlife and Countryside Link legal strategy group. I worked with other member organisations to submit a detailed response to the proposed changes to judicial-review rules (OS spring 2016 page 10) which are detrimental to charities. We are undertaking a detailed analysis of how Brexit will affect the environmental legislation and protections which are currently in place.

I am delighted that Hugh Craddock is now working for the society as a second case officer to assist with the ever-increasing work of protecting and creating commons, greens, rights of way and open spaces. It turns out, as we rather thought, that there is still more than enough work, and complexity, for us both to tackle. □



Highways under threat

Our vice-chairman Phil Wadey explains why, in England, it is urgent for applicants for definitive-map changes to challenge councils which have failed to make progress with those applications.

In England the Deregulation Act, which is shortly to come into effect, will trigger the closure of definitive maps to claims based purely on historical evidence, on 1 January 2026. It is therefore vital that we apply for additions where we have evidence (see previous 'Taking Action' articles in *Open Space*).

Continuous review

Under the Wildlife and Countryside Act 1981, since 1983 the definitive maps of rights of way have been under 'continuous review'. That is, the surveying authority (the county council or unitary authority) makes an order to modify the map one path at a time, instead of the previous system where changes were batched and the whole map was reviewed every so many years.

The council is required adequately to resource the duty to maintain its definitive map so that, for every application made by a member of the public to change the map, there should at least be a decision whether to make an order within 12 months of the applicant certifying that he has told the owners and occupiers of the application.

Very few councils have allocated enough staff to meet the 12-month requirement, although there are a few high achievers.

Fortunately, the 1981 act made some provision for this. Under the current law

(para 3(2) of schedule 14 to the 1981 act), 12 months after serving the certificate on the council confirming that the application process is complete, it is possible to make an application to the secretary of state (England) or Welsh ministers (Wales) that she or they direct the council to determine the application within a further set period of time.

The process for making a 'direction application' is straightforward, by email or letter, as there are no special forms (see the government guidance <http://bit.do/cnxoU> for England, <http://bit.do/cot5U> for Wales).

We recommend that, before seeking a direction, you write to ask the council why the application has not been determined.

Policy

The secretary of state and Welsh ministers currently have the same policy for considering requests for directions. They look first at whether the council has a statement of priorities setting out its general way of deciding which applications to consider next, and then at whether that statement is reasonable. They check any actions the council has taken and its expressed intentions to act, including any estimate of when determination will take place. The general circumstances of the case and, importantly, the views of the applicant are also relevant.

Recent decisions can be found on the *gov.uk* website for England and the *gov.wales* site for Wales, by searching for 'schedule 14 decisions', although at the end of September there were no



Green Lane, Ilminster, Somerset. The application was made in 2010. The secretary of state has directed that it be determined by 14 July 2017⁽¹⁾. Photo: Sarah Bucks.

directions on the Welsh website.

Of particular interest are the comments made by inspectors on the reasonableness of council policies. For example, Bradford Metropolitan District Council was directed to determine a footpath application last year⁽²⁾. The inspector found that the council's general policy of prioritising was satisfactory, but went on to consider that a delay of nine years since the application had been made, with no prospect of the case starting to be examined for a further eight years, was unacceptable. The council was instructed to make a decision within 12 months whether to make an order.

Certificate

In 2004 Cornwall Council received the certificate confirming notification of landowners and occupiers of land crossed by an alleged footpath⁽³⁾. The council did not expect to reach this case until 2024, some 20 years after the certificate was issued, meaning that some of the witness evidence would be over 40 years old. A direction was issued giving the council 18 months to reach a decision.

This last case raised two additional points. Firstly it was the second attempt to obtain a direction, the first having been unsuccessful in 2009. This shows that the

secretary of state can change her mind about a direction when there is continued failure to make progress.

Secondly, the applicant referred to earlier decisions of the secretary of state in which directions had been granted; the decision letter dismissed these arguments saying that each case is considered on its merits.

Before making an application, it is worth checking the council's statement of priorities and asking when it thinks the application will be decided. If this is going to be a long time an application for a direction would be worthwhile, even if there are no other features of the case that would raise its priority.

Under the package of reforms in the Deregulation Act 2015 which will be introduced in England later this year, it will no longer be possible to request the secretary of state to give a direction. Instead, applicants must go to the magistrates' court.

Drawback

The major drawback of the new approach is the cost: current court fees are £205 to commence proceedings and £515 for a contested hearing; these will deter many. If you are conducting systematic research, we advise you to go to court with a number of applications simultaneously since, we hope, one fee will cover them all. But for many, the ability to get councils to act more quickly will be lost.

So we urge anyone in England whose application has remained undetermined for more than 12 months to request a direction to determine, and thereby benefit from the pre-deregulation system. Applicants for Welsh paths need not worry for now, although it is probably worth getting on with it. □

(1) FPS/G3300/14D/2 dated 14 July 16.

(2) FPS/W4705/14D/2 dated 8 June 15.

(3) FPS/D0840/14D/10 dated 8 June 16.

Swiss commons

Our general secretary went to an international commons conference in Bern, Switzerland, in May.

This was the European conference of the International Association for the Study of the Commons (IASC), a largely academic body. My visit was funded from the Elinor Ostrom Award, won by the society in 2013.

I was pleased that there were a number of sessions for practitioners to discuss their work. Those present included the Swiss-based ICCA Consortium. ICCA is the indigenous peoples' and community conserved territories (so, for example, it is possible that the Dartmoor Commoners' Council is an ICCA).

Smart Cities

The subjects of the academic sessions ranged from Smart Cities, (making life better for the residents of Bangalore in India and Bologna in Italy); forest commons (the commons of north Portugal suffer pressures similar to our upland commons); environmental justice and geographical indicators on products.

All these have a commons element, in the sense of being shared resources.

Left: tree-trunk irrigation channel. Right: black-nosed sheep near Naters.



One day was devoted to field trips and I went to Naters in Valais canton, south of the Jungfrau range, to hear about the Jungfrau-Aletsch World Heritage Site, irrigation systems and commoning.

The communities here still practise transhumance, taking their sheep, goats and cattle up and down the mountains in seasonal stages. Farming is now part time and not the main source of income for most families.

After a train to Brig, which connected with the postbus to Blatten, we walked down the valley towards Naters looking at the irrigation channels which are fed by glaciers. The irrigation system was established about 600 years ago and the canals (*suonen* in German, *bisses* in French) were originally made from hollow tree-trunks.

The community depends on the irrigation systems to enable it to grow crops in the meadows for, surprisingly, this is the driest part of Switzerland, with little rain after May. I learnt a lot that week. □





The new world

Now that we seem to be leaving the European Union, agricultural-support systems are open for reconsideration. We shall lobby for a regime which is sympathetic to public access.

Payments should be made for providing improved access, such as leaving cross-field paths uncultivated or mowing headland paths, and for new access—both linear and right to roam.

There should be robust cross-compliance so that grant recipients who disobey the law on public paths have their subsidies cut, with a simple penalty-notice system for deducting the payments.

Eversley achievement award

Congratulations to our member, trustee and local correspondent Peter Newman, the first winner of our Eversley Award for outstanding personal endeavour.

The society presented the award of a certificate and a clock to Peter at the AGM, in recognition of 25 years' work with offenders on Community Payback.

Peter (left) receives the award from our chairman, Graham Bathe.



Peter and the offenders installed about 800 stiles and gates, waymarks and fingerposts, and many notice-boards and footbridges in 16 parishes in north-west Herefordshire (OS spring 2016 page 14). Peter is also our longest-serving local correspondent of 32 years' standing.

The award was established by the trustees to be presented to someone who has championed the society's work and made an exceptional contribution. Anyone may nominate or be nominated. *If you wish to nominate someone please contact us for details of the process.*

Criminalising shepherds

We have objected to the Forest of Dean District Council's proposed measure to make so-called irresponsible shepherds into criminals.

The council invited comments on its plans to impose a public spaces protection order (PSPO) in the village of Bream, three miles north-west of Lydney in Gloucestershire. The council wished to address the problem of sheep wandering through the centre of the village, causing a nuisance.

PSPOs were introduced in the Anti-social Behaviour, Crime and Policing Act 2014 as a means of reducing crime and anti-social behaviour in public places. We objected to the use of a PSPO at Bream: it is excessive and oppressive, covering a wide area, and it could endanger lawful commoning and potentially make criminals of innocent people.

We advised the Home Office on the application of PSPOs during the passage of the 2014 act. We are convinced that parliament never intended PSPOs to be

used as a blanket measure where there are specific remedies available. If there are individuals causing a nuisance, any action should be directed at them. We have offered to help the district council find a solution.

Welcome home PM

When Prime Minister Theresa May returned from her Alpine hiking holiday a letter from the society awaited her.

We expressed our delight that the Prime Minister enjoys walking, but urged her to look into the state of public paths in England and Wales which, due to continuing local-authority cuts, are deteriorating. We emphasised the importance of the national parks and areas of outstanding natural beauty; we called for greater access to the countryside and full implementation of part 1 of the Commons Act 2006 so that we can restore to the registers land throughout England which was wrongly omitted.

We received a friendly, thorough reply from environment minister John (Lord) Gardiner which, unfortunately, did not offer anything new.

White Moss win

A planning inspector has rejected the proposed commercial development of White Moss Common in the Lake District National Park.

The Lowther Estate wanted to create a 'visitor hub' at White Moss, on the A591 near Grasmere. The development included an events venue, retail outlet, catering facility and bike hire, as well as suburbanisation of local footpaths.

The works were on common land so the estate needed ministerial consent under the Commons Act 2006 section 38, as well as planning permission which had been refused by the Lake District National Park Authority. The Planning Inspectorate held a public inquiry into the



White Moss. Photo: Kate Wilshaw.

planning appeal and commons application in August.

Other objectors included the Friends of the Lake District and the Federation of Cumbria Commoners. We were represented by Ian Brodie, our knowledgeable local supporter.

The inspector, Mr Philip Major, concluded that the proposals would be likely fundamentally to change the nature of the immediate surroundings, and would establish a commercial enterprise in a currently unspoilt location which was 'famously beautiful'.

He was concerned that the development would encourage people to congregate in an area which currently only attracts those wishing to use the small-scale facilities, seriously altering the nature of the surroundings, with a harmful impact on the ambience of the woodland. He rejected the planning appeal and the commons application. We are delighted.

Honorary life members

After 23 years, our vice-president Edgar Powell has retired as our local correspondent for most of Worcestershire and part of Herefordshire. Throughout that time he has received constant support from his wife Audrey. In recognition of their dedicated service the trustees agreed to make them joint honorary life members.



Audrey and Edgar Powell at home.

Edgar's achievements are many and various. He played a vital role in the nationally-significant, 15-year campaign against a deplorable path-rationalisation scheme. This included about 100 routes in Ombersley and surrounding parishes in Worcestershire: he helped to ensure that the scheme foundered. He also served on the Worcestershire Local Access Forum for ten years, six of them as chairman.

He has given countless talks and training sessions and is an expert in commons, greens and paths. Many members have benefited enormously from Edgar's help and advice, as has our staff. We are pleased that he will still be available to help in specific cases.

Turbines to wreck common

The Welsh Cabinet Secretary for Environment and Rural Affairs, Lesley Griffiths, has approved a controversial application by RWE Innogy UK Ltd to erect 16 wind turbines and associated infrastructure on Mynydd y Gwair and adjoining commons north of Swansea.

The society, represented by Clare Moseley, was among many objectors at a public inquiry in February into the developers' proposal to build on common land and to provide land in exchange.

The public-inquiry inspector, Clive Nield, conceded that 'the construction of 16 very tall structures and a long length of access track over the commons would

inevitably change its character from that of a wild, open expanse to a landscape with an element of industrial-style development'.

He concluded that the wind farm 'would be detrimental to the appearance of the commons and the majority of people's enjoyment of them'. Nevertheless, because he believed the scheme would bring substantial benefits to the economy and renewable-energy targets, he recommended that it go ahead.

This decision follows that of the Circuit of Wales in Blaenau Gwent (OS spring 2016 page 12). This is a worrying trend in decisions which rely on alleged economic benefits to justify the argument that common-land exchanges are in the public interest.

Success at Puddletown

We have helped to achieve an excellent outcome from SITA UK's plans to extend its Binnegar Quarry, close to Puddletown Road near Wareham in Dorset.

Because the development would take about 49 acres of Ford Common, the company had to provide land in exchange. It offered about 56 acres in separate parcels. This includes a small, new public car-park off Binnegar Lane.

Our local correspondent Ralph Holmes was involved at an early stage and worked hard to get the best deal for the public, with new paths, car-parking and easy access to the site. Natural England advised on the wildlife aspects. The inspector approved the common-land exchange; the development already had planning permission.

Our AGM

We held our AGM in London on 7 July and 53 members of the society came.

We were sorry to say goodbye to Tim Crowther who stood down from the board of trustees after 12 years' service, including a spell as chairman. Tim



Abbey Road village green in Steyning, West Sussex. Photo: Paul Campbell.

championed urban spaces in particular and was dedicated to our cause; we often turned to him for advice and help, which he gave generously. We shall miss him.

We welcomed Jean Macdonald from Warwickshire back to the board of trustees; she was a member from 2010-13 with a year as vice-chairman.

After the formal business we had two presentations on coastal access: Quentin Grimley, Wales Coast Path officer for Natural Resources Wales, and Paul Johnson, principal specialist (statutory access) for Natural England, spoke about the development of coastal paths and access in the two countries.

Steyning's new green

West Sussex County Council has registered four and a half acres of open space at Abbey Road, Steyning, as a village green (pictured above).

The applicants, the Friends of Abbey Road Open Space, provided evidence from 61 witnesses that local people had used the land for 20 years without being stopped or asking permission, ie 'as of right'. The use had persisted until the landowner, Steyning Parish Council, posted a notice on 25 July 2014 in which it gave the public permission to use the land, thus challenging use as of right.

The county council considered that the

applicants had satisfied all the tests and resolved to register the land as a green. This gives local people the right to enjoy the open space for informal recreation and protects it from development.

Loxley inquiry

We learnt from our member Tony Gibbon of a public inquiry into an application under the Commons Act 2006 to deregister part of a green at Loxley, near Stratford-upon-Avon in Warwickshire. The land was registered in 1970 on an application by the society.

Mr and Mrs Murray of the neighbouring Loxley Farm applied to deregister the land on the grounds that it was, at the date of registration, and still is part of the curtilage of Loxley Farm. In a written representation we argued stoutly to the contrary. The result is awaited. □

Loxley green. Photo: Tony Gibbon.



Charity stops at the stones

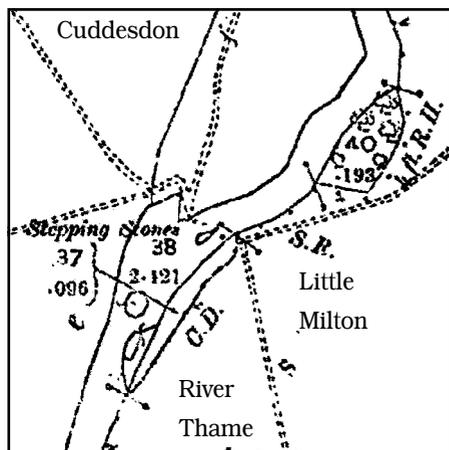
Chris Hall, Oxfordshire local correspondent, reports.

The 125-years-long campaign to retain the public crossing of the River Thames near Chiselhampton (NGR SP 601005) has received a severe setback.

Following a three-day public inquiry in March inspector Mark Yates refused to confirm an order made by Oxfordshire County Council (OCC) to extend Cuddesdon & Denton FP 28 eastwards across the river on the line of the former stepping stones.

The extension had been denied by OCC but our member Hugh Crawley, who had claimed the route as long ago as 2002, appealed; the order was made by direction of the secretary of

The stepping stones first appeared on this 1:25000 1898 OS map. The tiny eyot has now vanished. The footpaths (pecked double lines) converge at the crossing and are now definitive rights of way.



state after inspector Peter Millman had found in his favour. The council then took a neutral stance (OS summer 2015 page 14).

The order was opposed on the west bank by Sir Montagu Victor Blank, the controversial banker who in 2008 masterminded the takeover of HBOS by Lloyds TSB some of whose shareholders subsequently wanted him stripped of his knighthood. Blank lives at the Elizabethan Chippinghurst Manor (half a mile upstream of the stones) where he holds lavish, celebrity-studded cricket weekends in aid of favoured causes. In June this year, the *Jewish Chronicle* dubbed him 'The banker who bats for charity', but his charity does not extend to public rights on his property. On the east bank an absentee farmer objected.

At the inquiry the society was represented by George Laurence QC; I assisted him, having by agreement taken over the case from Hugh Crawley. Edwin Simpson, barrister, led on the other side.

Washed away

Local parish councils asserted a right of way at this point in the 1890s because a bridge had been washed away and the link between the path networks on opposite banks had been lost. The bridge was not replaced but stepping stones were provided and were marked by the Ordnance Survey from 1898 onward—and still were on the 2006 Explorer map.

By the 1960s the stones were often impassable and efforts were made to claim a right of way for the definitive map and thus compel OCC to keep the crossing in repair. The council accepted



The remains of the stepping stones.

its responsibility and planned a bridge to reopen the way. Eventually however the likely costs caused a change of mind and since then OCC has opposed every effort to open the route whatever the evidence. The council also deliberately delayed consideration of Mr Crawley's application for more than ten years: as a result we lost potential living witnesses to use of the stones. In the end only two old ladies, who were not prepared to attend the inquiry, submitted brief written statements which, as is usual, failed to impress the inspector.

Mr Yates, in a virtuoso feat of salami slicing, took each piece of evidence in turn and cast sufficient doubt on it to convince himself that it could not count towards our case: the history of undoubted public use and attempted use for more than a century went for nothing. But you can paddle or wade across when the Thame is low in summer. (*Ref FPS/U3100/7/36, 13 May 2016*)

We save Cotswold path

Gloucestershire County Council made an order to close the 250-metre public footpath HOD9 at Oddington, two miles east of Stow-on-the-Wold. We were the only objector.

The case was referred to inspector Heidi Cruickshank of the Planning Inspectorate who determined it by written representations. The applicant was the owner of Brans Cottage which adjoins the path; this runs from the A436 road at its

north end to a parallel lane to the south.

The landowner and the council claimed that because access to the path at one end was on a busy road, and at the other it crossed a garden and patio close to the kitchen windows of Brans Cottage, the path was little used. They argued that it was therefore no longer needed by the public and that the tests under section 118 of the Highways Act 1980 were met.

Our local correspondent, Gerry Stewart, responded that past complaints from the public, and evidence of periodic surface maintenance, showed that the path had been used to some degree in the past. The patio and landscaping which incorporated the path had only been introduced fairly recently.

Preferable

Gerry promoted a slight diversion away from the house as a preferable option to closing the path, but this was rejected by the council and the householder.

The inspector accepted that because the path passed through the landscaped garden close to the house there was a deterrent effect on public use. She considered that closing the route was contrary to many aspects of the council's rights-of-way improvement plan (ROWIP). The path enabled people living in properties along the A436 to have safe access to village amenities such as the

The patio across the path.



village hall and pub. Otherwise they had to walk along the A436 which was a potential danger; this did not meet the council's aim of promoting alternatives to car use.

She said 'The route provides a short, off-road access to the village centre, with an existing verge alongside the A436, and I consider that it forms part of the wider functional highway network for village residents'. She concluded that the order was not expedient 'when taking account of the wider public interest which is given weight by the ROWIP' and she refused to confirm it. (Ref FPS/T1600/3/16, 30 August 2016)

Our new activists

We welcome four new local correspondents: Simon Bunn for St Edmundsbury Borough in Suffolk, Yvonne Hunt for Rochdale Borough, Malcolm Lees for Chelmsford Borough in Essex and Mary Traynor for South Lakeland District in Cumbria. Peter Newman has added Radnorshire, Powys, to his Herefordshire territory.

We need more local correspondents so please look at our website (<http://bit.do/cBZbY>) and, if you would like to help, get in touch with the office.

Paths and land sales

On 4 July the Law Society's new conveyancing form took effect, making it compulsory for local authorities to state the existence of public rights of way across or adjoining land which is for sale. They must also report any pending applications for paths to be added to the definitive map.

No longer will new property-owners be able to claim they did not know of the existence of definitive paths and those on the register. We have been lobbying for this change for many years.

We are however sorry that our campaign for compulsory questions on the form

about registered commons and village greens was unsuccessful.

Deregulation delays

Work continues on the regulations for the Deregulation Act which has not yet been implemented. We are preparing for the 2026 closure of the definitive map to applications based on historic evidence.

AGM 2017

Next year's AGM is on Thursday 6 July at Friends House, Euston Road, London. Note it now!

Thanks to your generous support our Find Our Way Fund now stands at over £12,000. A first call on the fund was our well-attended training day in Chepstow in June. We shall organise further days next year (with the British Horse Society and Ramblers) when experts Sarah Bucks and Phil Wadey will explain how to research and apply for paths to be added to the map. Watch our website for details.

Pushing Powys

Many paths in Powys are inaccessible owing to obstructions, and the county council is ineffective at reopening them because it will only work in one community at a time, ignoring the others.

As a last resort, our Radnorshire local *Obstructed: Llandegley footpath LA1191 which features in a new walks book.*



correspondent, Peter Newman, has served notices on the council, under section 130A of the Highways Act 1980, requiring it to act. The result is that the county is rectifying problems without the need for court action.

Welsh correction

Peter Newman discovered that the Welsh Government's guidance note about the removal of obstructions under section 130A of the Highways Act 1980 stated that inadequately-maintained gates and stiles could not be dealt with as obstructions; instead they must be addressed by the local authority under section 56 of the Highways Act 1980 (highways out of repair). Clearly that was wrong, as maintenance of stiles and gates is the responsibility of the landowner.

Peter drew the Welsh Government's attention to this error and was pleasantly

surprised to be told that the guidance is being amended and will be circulated to all local authorities in Wales.

Network Rail closes paths

We are deeply concerned about plans by Network Rail to close about 130 crossings in East Anglia using the Transport and Works Act 1992. We shall join with other user groups to oppose this wholesale approach.

Meanwhile, our Cambridgeshire local correspondent Alysoun Hodges has discovered that Network Rail has closed Ely footpaths 17 and 57 which cross the Ely-Norwich railway on either side of the River Lark, without following any procedures. A traffic regulation order is in the offing but, at the end of September, it had not been made. Alysoun has complained to Cambridgeshire County Council about this unlawful closure.

Len the centenarian

Our vice-president Len Clark reached his century on 19 August.

Len is a treasure. He has been a pillar of strength to, and wise critic of, numerous organisations including the Youth Hostels Association, National Trust, Campaign for National Parks and ourselves.

In 1978 he became our commons liaison officer, a roving researcher travelling England and Wales on his motorbike to ferret out the issues affecting commons. The Common Land Forum was established in 1983 to resolve the commons' future with Len as its secretary.

A member of the National Trust's properties committee, Len argued forcefully and persuasively for the trust to acquire countryside not stately homes. He played an important part in the designation of the South Downs National Park, which had been his lifetime ambition. He sat in



Len (centre) with friends Fiona Reynolds (left) and Kate Ashbrook.

the public gallery for the second reading of the National Parks and Access to the Countryside Act 1949. This was his first evening out with his future wife Isobel—which says much for their dedication to the cause.

We thank Len for all he has given us, and hope he enjoys many more years of good health.



The Fight for Beauty: our path to a better future by Fiona Reynolds (Oneworld Publications, £16.99; 20 per cent discount to OSS members at <http://bit.do/bZXH>, use the code BEAUTY20 on check out).

Previous generations talked of beauty with confidence and acts of parliament were passed to protect the beauty of Britain's countryside, but today instead we use clumsy words like 'biodiversity, ecosystem services, natural capital and sustainable development', says Fiona.

She takes us through the history of 'beauty' in its widest sense, and covers national parks, farming, forestry, cultural heritage and much else, in a thorough piece of research blended with her personal experience as head of the Council (now Campaign) for National Parks (CNP), CPRE and National Trust.

Central

It was good to see, in the chapter on the Forest Charter (1217), that Fiona recognises that it shaped common rights which 'were so central to the arguments about beauty in the nineteenth century'—and indeed are responsible for much beauty in England and Wales today.

Fiona points out that although each generation wants to protect its past, it is at best ambivalent about much of the present it wants to keep. She does not answer the tricky question about which stage of history we should preserve—but who can? She concludes that while the fight for beauty has achieved much it has also lost much and that is because we do not champion beauty itself—despite the evidence of its many benefits.

She argues that we must talk about beauty unashamedly, and care and fight for it. In particular we must ensure that children experience beauty and their natural environment, for it is their heritage. This is a timely rallying call.

22 Ideas that Saved the English Countryside, the Campaign to Protect Rural England (Frances Lincoln, £25). Published to celebrate CPRE's ninetieth anniversary, this book describes many of CPRE's campaigns.

Each chapter is written by a different person, whose names are mostly familiar. The early influence of the Commons Preservation Society gets good recognition; but Satish Kumar, in the national parks chapter, fails to mention the Standing Committee on National Parks, forerunner of CNP, which should get credit.

Well illustrated with lovely photographs, it portrays the people and the issues.

Tales from an Environmental and Tribal Lawyer by Jerry Pearlman (£6.99 +p&p from jjp@pearlman.co.uk, 0113 267 1114). Jerry, our Leeds local correspondent, writes amusingly of three 'zealots' for commons, paths and access whom he advised during his 60 years of legal practice, and of his involvement in an unusual, tribal-boundary dispute in Uganda.

Open Access Walks, East Riding of Yorkshire (East Riding of Yorkshire Council, £2 from tourist information centres at Humber Bridge, Beverley and Bridlington). This describes 19 pleasant walks making use of hard-won public-access land as well as public paths. **KA**

Ian Mercer: the commons' man, 1933-2016

The first Dartmoor National Park officer, the first chief executive of the Countryside Council for Wales, and a man who really knew his commons has died aged 83.

Ian Mercer was Dartmoor National Park officer from 1973-1990, at a time when the national parks were dependent on county councils for funding. Ian sometimes had to persuade his paymasters to allow the park to appear in opposition to them at public inquiries—into road schemes and military training for instance.

His great achievement in that job was the Dartmoor Commons Act 1985 which established a commoners' council to manage the Dartmoor commons with a public right to walk and ride there. As a member of the Common Land Forum from 1983-6, Ian argued that the Dartmoor precedent should apply nationally, and it formed the basis for the Commons Act 2006.

In 1990 he got the job of running the new Countryside Council for Wales (CCW) which, for the first time in Great Britain, brought together the disciplines of landscape, recreation and wildlife—a union in which he firmly believed. There he conceived *Tir Cymen*, the first of a

Ian at the 25th anniversary of the Dartmoor Commoners' Council in August 2011.
Photo: John Waldon.



series of agri-environment schemes which pay farmers to manage the landscape and provide public access.

His *bête noire* was John Redwood who, as Welsh secretary, in 1995 imposed a 16 per cent budget cut on CCW, resulting in a significant loss of staff and the ability to defend the natural environment. Ian rightly never forgave him.

Back in Devon in 1995 he became the first secretary general of the Association of National Park Authorities, enabling them to speak with one voice. Over the years he had won the trust of the Dartmoor commoners and they invited him to become chairman of the council, a post he held from 2004 to 2013.

Scholarly

He wrote the second edition of the New Naturalist's *Dartmoor*, a scholarly, 400-page work. In the introduction he reflects on how he, a Black Country boy, was introduced to Dartmoor in 1952 by his tutor, Gilbert Butland, at Birmingham University where he read geography. Butland's grandparents, commoners on Holne Moor, were listed among the homage (jury) in the book of presentments (those accused of petty crime) in the manorial court. Twenty five years later Ian, as Dartmoor National Park officer, was steward of the manor of Holne (which was owned by the park) and wrote more presentments in the same book. The connection delighted him.

First and foremost a geographer, Ian established the Slapton Ley field centre on the south Devon coast in 1959 and taught countless people to appreciate the natural world. He was a whiz at identifying birdsong and a dawn-chorus walk with him was a treat.

He is greatly missed by all who love national parks, the natural world and common land.

Kate Ashbrook

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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