Open Space

Spring 2013 Vol 30 No 6

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Open Spaces Society

Campaigning since 1865

Open Space

Cover story

A runner enjoys Wycombe Rye at High Wycombe, Bucks. In 1962 this open space was threatened with compulsory purchase for a ring road and was only saved by special parliamentary procedure (SPP). The government, in its Growth and Infrastructure Bill, wants to circumvent SPP in crucial circumstances, putting many open spaces, such as the Rye, at risk (see page 4). Photo: Kate Ashbrook.

Development is all

Four days after the first reading of the government's Growth and Infrastructure Bill, with its pernicious attack on town and village greens (page 2), I went to Westminster Abbey to celebrate the life of our early activist and National Trust founder Octavia Hill. A tablet, carved by Rory Young, was unveiled in the nave to commemorate her, 100 years after her death.

National Trust chairman Simon Jenkins read from Octavia's *Space for the People*, which she wrote in 1875 while campaigning (unsuccessfully) to save Swiss Cottage Fields, London, from development.

'There on a summer Sunday or Saturday evening, you might see hundreds of working people spread over the green open space like a stream that has just escaped from between rocks.' As he read those liberating words, the Growth Bill was set to present the biggest-ever threat to our green spaces.

Outlaw

The Growth Bill will outlaw any application for village green on land which is earmarked for development—even though the earmarking may have been done in secret.

And that is not all. The government is striking at the very heart of prescription. This is the ancient right whereby an activity enjoyed for 20 years, unchecked, openly and without permission, acquires the sanction of the law.

That is how village greens are won, on the basis of 20 years' enjoyment for recreation.

But this government doesn't care much for the law of prescription. Now it proposes to do away with people's ancient 'right to light', based on householders' uninterrupted enjoyment of natural light for 20 years.

The Law Commission, with backing from ministers, is consulting on plans to axe the right to light, inspired by a court case which required the top storeys of a building to be removed because they blocked the neighbour's daylight.

Paramount

Village greens and rights to light: both are alleged, with little evidence, to stand in the way of development—which for this government is paramount.

And even where we still have greens and open spaces, we may find we can no longer enjoy them. The draft Anti-social Behaviour Bill (page 9) proposes to replace the current, nasty, gating orders, with even nastier 'public spaces protection orders'—in fact exclusion orders.

Unless the bill is amended, these orders may be applied to public paths and open spaces, including commons and greens. After limited consultation, they will make trespass there a criminal offence: unprecedented and oppressive.

So there is plenty to fight against—and fight we shall. **KJA**

Assault on greens

The government's Growth and Infrastructure Bill threatens green spaces throughout England.

The first we knew of the government's Growth and Infrastructure Bill was when our general secretary arrived at Trap Grounds, Oxford, on 18 October for an interview with BBC One's *Countryfile* about village greens.

Countryfile told her that the peg for the story was the Growth Bill, to be published later that day, with its assault on the registration of new greens. Trap Grounds is a green which could not have been registered under the government's new rules.

Action

We swung into immediate action, with a press release and briefing for our members and MPs. We are enormously grateful to all who lobbied their MPs to speak against these provisions.

The bill is sponsored by the Department for Communities and Local Government, with support from the Department for Business, Innovation and Skills, and predictably is all about making development easier. Our concerns, which have not been assuaged at the end of the Lords committee stage, are many. (Clause numbers refer to the bill as it entered the House of Lords.)

Clause 13 enables a landowner to deposit a statement to bring an end to any period of use by local people for lawful sports and pastimes. Once this has been deposited, local people have two years in which to lodge an application to register the land as a green. There is no requirement on the face of the bill to publicise such a notice. Although ministers have said the regulations will cover this, the draft of these does not do so adequately.

Clause 14 suspends the right to register land as a green when a so-called 'trigger' event has occurred. These events are listed in schedule 4 and relate to development. Some provide no notice to local inhabitants that they have lost their right to register as a green land

'As soon as the land is threatened by the trigger event, it becomes too late to save it.'

which they have long enjoyed for informal recreation. As soon as the land is threatened by the trigger event, it becomes too late to save it. No time is allowed in which people can gather evidence of use.

Concerned

We are also deeply concerned about clause 22. This will remove parliament's right to determine, by special parliamentary procedure (SPP), the fate of open space which is threatened with compulsory purchase where there is no exchange land (see page 4).

The bill had its second reading in the House of Commons on 5 November and many spoke up for greens. Hilary Benn (Leeds Central, Lab, and Shadow Secretary of State for Communities and Local Government) said: 'There is the positively Kafkaesque proposal that the moment a planning application is

published, someone can no longer seek to register a green. Since the first that most people will hear of an application is when it is published, this seems to be a pretty clever way of stopping people exercising their rights, unless they happen to be mind readers.'

Joan Walley (Stoke-on-Trent North, Lab) said: 'I believe that the bill will create a situation in which commons and greens become something to resist rather than celebrate.' Dominic Raab (Esher and Walton, Con) questioned the minister on what evidence he had on the scale of vexatious applications to register greens and asked what consideration had been give to the society's 'milder and more modest' proposals to change the guidelines, rather than legislation, to improve the process. Annette Brooke (Mid Dorset and North Poole, Lib Dem) said: 'I have examples of applications [for greens] holding up development, but I do not have overriding evidence that it is the case.' Indeed, the lack of evidence for many parts of the bill (dubbed 'a dog's dinner' by one MP) was criticised on all sides.

'... the bill will create a situation in which commons and greens become something to resist rather than celebrate.'

The bill proceeded apace and the following day we learnt that the House of Commons Committee was inviting written evidence. We made a detailed submission. However, we were angry not to be among those organisations called to give oral evidence and we wrote to the chief whip, Sir George Young, to ask why we had been excluded. He did not even respond.

In our submission we addressed the issues raised by ministers. They claim that the number of greens applications is increasing; we showed that there had been a drop in the number of applications since 2008. They claim that applications are undermining the planning process; we showed that the number of applications in relation to planning applications is minuscule and that three quarters of applications are processed within 13 weeks. They claim that the bill is implementing the recommendations of the Penfold Report; we argued that it goes way beyond this.

Penfold recommended a review of the operation of greens registration to reduce the impact on developments that have received planning permission. We agree with this, but the bill will put the planning process first and prevent registration.

We reminded the committee that we have for many years argued for improvements in the registration system, to speed it up and clarify it: for instance there should be timescales at every stage and registration authorities should have greater discretion to rule out vexatious applications. These changes could be achieved by amending the regulations and guidance not the law. Sadly, ministers have ignored our advice.

We drafted amendments which were

Tom Heap (left) from BBC Countryfile *helps Catherine Robinson of the Friends of Trap Grounds to rake grass.*

tabled by MPs and considered by the committee and at report stage, but we made no progress, nor received any assurances to cause us to change our position.

The bill completed its passage through the commons in two months, and second reading in the lords was on 8 January. A number of lords were concerned about greens, and we were delighted that Lord Faulkner of Worcester (Lab) spoke on SPP.

Our vice-president Lord Greaves (Lib Dem) tabled amendments to the village green clauses. At committee stage he spoke persuasively of the need to treat greens separately from the planning system, in view of their legal basis. Tony Greaves was much involved in the greens clauses in the Countryside and Rights of Way Act 2000 and the Commons Act 2006 and knows his stuff. Unfortunately, the government seems not to care that greens are a product of long use by custom, and is determined to cast aside the ancient legal basis of this custom on little evidence.

We do not expect to achieve much change in the final stages of the bill. Once it becomes law (probably in March) people will have only two months in which to apply to register local land on which developers have their sights. After that it will be too late. We shall keep you posted. But our message is, get your applications in now to register long-used land as greens.

The Kinder spirit

Following the successful eightieth anniversary celebrations of the Kinder Scout mass trespass last year, the Kinder and High Peak Advisory Group of the National Trust is organising an annual Spirit of Kinder Day. The first is at New Mills town hall, Derbyshire, on Saturday 27 April. Our general secretary will be among the speakers. See *www.kindertrespass.com*—and do come.

The Dyke at Wycombe Rye: the Rye was threatened in 1962 by a compulsory purchase order and saved by special parliamentary procedure.

Loss of democracy

Clause 22 of the bill is about special parliamentary procedure (SPP). At present, when a local authority or statutory undertaker seeks a development consent order (DCO) involving the compulsory acquisition of open space, either it must provide suitable land in exchange, or the DCO becomes subject to the consent of parliament under SPP. The law stems from the Acquisition of Land (Authorisation Procedure) Act 1946 in which our society had a hand.

Clause 22 empowers the Secretary of State for Communities and Local Government to waive SPP for open space where there is no suitable exchange land or the exchange land is deemed too expensive. So parliament will no longer have the final say.

Since open space is ‘any land ... used for the purposes of public recreation’ the clause puts at risk all the open spaces enjoyed by the public, whether formally or informally. These include the thousands of acres of access land (other than common) mapped under the Countryside and Rights of Way Act 2000

and countless other places.

Additionally the secretary of state may circumvent SPP where open space is being acquired for a 'temporary (although possibly long-lived) purpose'—a remarkably frank oxymoron. 'Long-lived' is of course not defined.

Ministers have failed to appreciate that whereas SPP is not subject to judicial review, their decision to circumvent it may be. Thus the very projects they wish to accelerate could be bogged down in lengthy legal action.

Wycombe Rye is 68 acres of public open space on the east side of High Wycombe in Bucks, treasured by local people as a green lung with its backdrop of woodlands. In 1962 part was threatened with a compulsory purchase order to enable the inner-relief road to be built there. No exchange land was offered, the plans were subject to SPP and the case was heard by a parliamentary joint committee.

Local schoolmaster, the late Jack Scruton, secretary of the newly-formed High Wycombe Rye Protection Society, and the OSS presented robust arguments to the committee.

Magnificently, the committee ruled that the compulsory purchase orders be annulled. The Rye has remained intact to this day.

But once the decision is left to the secretary of state, who can say what the fate of countless open spaces might be?

Eloquently

Lord Faulkner spoke eloquently about the Rye when opposing the clause at committee stage of the Growth Bill in the House of Lords. The minister, Lord Ahmad of Wimbledon, responded 'we expect that, in most cases, developers will continue to provide suitable replacement land to avoid the need for SPP', but there may be 'limited occasions, such as in heavily urbanised areas, when such land is not available'. Of course it is in heavily urbanised areas where such spaces are most needed. As Tony Greaves pointed out, the clause removes the incentive for developers to provide alternative land because they can apply to the secretary of state to let them off the hook.

This, together with the greens clause, will have a damaging effect on green spaces everywhere. ❐

Come to our AGM

on Tuesday 16 July 2013 at 11 am

at the Birmingham & Midland Institute, Margaret Street, Birmingham B3 3BS

If you would like to submit a motion to the AGM, it must reach us, bearing your signature, by midnight on Monday 3 June.

If you wish to stand for election as a trustee, we need your nomination, proposed and seconded in writing by members of the society and bearing your written consent, by midnight on Monday 3 June. Candidates must have been individual members of the society since 3 June 2012. The trustees meet in London or Reading, four times a year.

It will be possible to vote by proxy at the meeting. Details will be included in the next *Open Space*.

If you would like more information, please contact the office: telephone 01491 573535, email *hq@oss.org.uk.*

Case File

By right not as of right

Barkas and North Yorkshire County Council and Scarborough Borough Council, Court of Appeal (Civil Division) 23 October 2012 [2012] EWCA Civ 1373, *http://tinyurl.com/d782h84.*

In October 2007 Helredale Neighbourhood Council (HNC) applied to North Yorkshire County Council, the registration authority, to register land as a village green under section 15 of the Commons Act 2006. The land is a four-acre recreation ground on the south-east side of Whitby, North Yorkshire. It looks like a grassed, municipal recreation-ground among housing estates.

Rejected

The application was rejected in 2010 by the council on the advice of Mr Vivian Chapman QC (who held a public inquiry). Mr Chapman ruled that the local inhabitants' enjoyment of the field had been 'by right' not 'as of right'.

Christine Barkas, on behalf of the HNC, appealed to the high court which rejected her claim ([2011] EWHC 3653 (admin)). The matter went to the court of appeal, before three judges.

The field was acquired by the Whitby Urban District Council in 1951 for the erection of houses for the working classes under section 73 of the Housing Act 1936 (the 1936 act). It was laid out and maintained by the council as a recreation ground under section 80(1) of the 1936 act which allowed the council to provide recreation grounds in connection with housing. The 1936 act is now subsumed in the Housing Act 1985 with similar provisions in section 12(1).

The field was maintained as a recreation ground by the council, and its successor Scarborough Borough Council, under the 1985 act for the relevant 20-year period of the green claim, 1987-2007.

Lord Justice Sullivan gave the leading judgment, and the other two judges, Lord Justice McFarlane and Lord Justice Richards, agreed with him.

Mr Chapman had concluded that, since tenants of the council houses had a legal right to use the field until at least 2003 (when the council ceased to own the houses), the public also had such a right. Sullivan LJ considered the implications of the Beresford case (*R (Beresford)* v *Sunderland City Council* [2004] 1 AC 889) in which it was ruled by the court of appeal that land which was held under the New Towns Act 1965 should be registered as a green, but it was also decided that land held under section 10 of the Open Spaces Act 1906 would not be so registered.

Argued

Douglas Edwards QC for the appellant had argued that section 80 of the 1936 act was different from section 10 of the 1906 act: in the latter parliament had expressly provided that a local authority holding land under section 10 holds it 'in trust to allow ... the enjoyment thereof by the public as an open space ... and for no other purpose'. He submitted that where parliament wishes to confer a right to use land for recreational purposes it does so in express terms. In this case the land was not formally appropriated as open space.

Sullivan LJ could see no reason for drawing a distinction between land held under section 10 of the 1906 act and land which has been appropriated for recreational purposes under some other enactment.

He concluded that section 80 of the 1936 act, under which the land was held, gave the council power, with the consent of the minister, to provide a recreation ground in connection with the housing. That consent was given and the field was laid out and maintained as a recreation ground. Thus, the field had been appropriated for the purpose of public recreation (para 37). Therefore use by local inhabitants was *by right* and not *as of right* and the appeal was dismissed.

It is hoped that the appellants will obtain leave to appeal to the supreme court.

Testing expediency

Ramblers' Association v *(1) the Secretary of State for Environment, Food and Rural Affairs, (2) Oxfordshire County Council, (3) Susan Weston, (4) Michael Weston*, [2012] EWHC 3333 (Admin), 8 November 2012, *http://tinyurl.com/cdngrkc*.

Ever since we received a favourable opinion from George Laurence QC on the interpretation of 'expedient' in section 119 of the Highways Act 1980 (the section which deals with the diversion of public paths), the Ramblers and ourselves have sought a suitable case to test this.

This emerged when the Ramblers, Bodicote Parish Council (represented by our local correspondent Chris Hall) and others lost when fighting the diversion of footpaths Bodicote 8 and Bloxham 2, which ran past Bodicote Mill, north Oxfordshire (*OS* spring 2012 page 13).

Bolstered by Mr Laurence's opinion, Chris had argued at the public inquiry that the term 'expedient' in section 119(1) of the Highways Act 1980 provided a separate test from that of whether the diversion was in the interests of the owner; and that in considering whether the order was 'expedient' the council should have taken account of other arguments, such as the loss of an historic path and the cost to a cash-strapped local authority of gratuitously increasing the value of the applicants' property—and that the inspector should now do so. The argument was summarily rejected by the inspector, Peter Millman, who confirmed the order.

Nondescript

The Ramblers, with George Laurence arguing their case, appealed to the high court for the order to be quashed, hoping in addition for a ruling on the interpretation of 'expedient'. Unfortunately Mr Justice Ouseley did not quash the order. The ancient path no longer runs past the old mill but on a nondescript and ill-defined route across fields, and the value of the Westons' property has been substantially increased at public expense. However, the judge made useful pronouncements which will help us in fighting diversions which favour landowners.

The inspector in his decision (FPS/U3100/4/20, 16 November 2011, para 70) referred to two arguments which were raised by a number of the objectors, firstly that because the applicants knew of the existence of the

The old path past the mill.

footpath when they bought the mill it was not legitimate for them to expect that it should be diverted, and secondly that the diversion might set a precedent for the diversion of other millside paths. He rejected them as irrelevant to the tests for confirmation in section 119 of the 1980 act.

Before the matter came to court, the secretary of state had conceded that the inspector erred in law in treating those two matters as irrelevant, but had been persuaded by the landowners, the Westons, that the order should not be quashed.

In deciding whether to quash the order, the judge was guided by the test derived from *Simplex GE (Holdings) Ltd* v *Secretary of State for the Environment* [1989] 57 P&CR 306. Here the appeal court ruled that where a decision made as the result of an error was unlawful, the court need not quash that decision if it was satisfied that the decision would have been the same had the error not been made.

Governed

The judge ruled that use of the word 'expedient' in section 119(1) is governed by the words 'in the interests of the landowner'. The question for the council and the inspector 'is whether it is expedient in the interests of the landowner that the order be made' (para 25).

However, the use of 'may' in s119(1) gives the council a discretion whether to make the order even if it is expedient in the interests of the landowner. The council may consider the further tests which are set out in s119(6) which must in any case be considered at confirmation stage; these include consideration of whether it is 'expedient to confirm the order' having regard to further tests relating to such elements as public enjoyment.

The judge agreed with Mr Laurence that 'expediency' in s119(6) could include those matters referred to by the inspector in paragraph 70 as well as the historical integrity of the route.

Said the judge: 'In my judgment, that is the right approach to section 119(6) and expediency. It covers all considerations that are material. The fact that there is a focus given by the statute to specifying factors does not narrow down the scope of expediency in its application at that stage' (para 28). However, applying the *Simplex* test, he did not consider that if the inspector had taken account of the two matters in paragraph 70 he would have come to a different conclusion. Therefore he did not quash the order.

Opined

The judge opined that issues (which all too often arise), such as a landowner setting out 'to make use of the footpath less attractive by work at its edges, hostility en route, and so on' might be relevant when the interests of the landowner are examined but are more likely to be relevant under section 119(6). He also recognised that there may be circumstances in which the argument of the diversion setting a bad precedent might be used.

So we should encourage councils, when deciding whether to make a diversion order in the interests of a landowner, to consider all relevant factors, not just those mentioned in section 119(1) and (6), since they will have to consider them anyway when it comes to confirmation. Such factors could include the hostility of the landowner, the fact that he has made the definitive route unfriendly by intimidating gates and CCTV cameras, or ploughed or cropped it, and the historic integrity of the path.

The Ramblers' efforts in taking this case have been extremely worthwhile, and we are grateful to them for doing so. ❐

Far & Wide

Common land coalition

Last October, with the Foundation for Common Land, we formed the Common Land Coalition of 16 diverse countryside bodies. We marked our launch by a letter published in *The Times* on 27 October 2012, calling on environment minister Richard Beynon to implement urgently part 1 of the Commons Act 2006. This will update England's registers of common land.

All the coalition members will benefit from an up-to-date record of common land and rights. Our interest is that it will enable us to reclaim lost commons, with rights to walk and perhaps to ride. At present we can only do this in the seven 'pioneer' registration-authority areas.

The minister was planning to defer implementation until at least 2016 but, as a result of our campaign, we believe that implementation may be accelerated.

Helping to promote us

With this issue of *Open Space* you have received our new membership and legacy leaflets, the latter inviting you to remember us in your will. Please pass the leaflets to a friend. We welcome any help you can give in promoting and publicising our work. We can provide more of both leaflets for members to distribute locally. To publicise our work further, we are now on Facebook and Twitter, so please 'like' and 'follow' us.

Worse than gating orders?

The government's draft Anti-social Behaviour Bill proposes to replace gating orders, introduced into the Highways Act 1980 by the Natural Environment and Rural Communities Act 2005, with 'public spaces protection orders'. The bill has been scrutinised by the Home Affairs Select Committee and we submitted evidence jointly with, and drafted by, the Ramblers.

In our evidence we stated our concern about gating orders, which can be imposed by highway authorities without proper regard to objections or a need to hold a public inquiry. But the proposed public spaces protection order is far worse: it can be applied to spaces where the public has the right of recreation, such as registered commons and greens. There is no restriction on the size or locality of the land. The bill will make

Carn Galva Common, Penwith, west Cornwall, recently restored to the register by Ian McNeil Cooke, on behalf of Save Penwith Moors. Cornwall is one of the pioneer areas for part 1 of the Commons Act 2006.

breach of an order (ie trespass) a criminal offence.

Only limited consultation is proposed for such an order and the authority seems not to be required to consider the responses. There is also a limit on those who may challenge the order's validity.

The Home Affairs Committee did not invite us to give oral evidence, and, although it expresses concern about the public spaces protection orders, and recommends that there be 'a six-monthly interim approval', it does not condemn them as we do. We sincerely hope that the government does not introduce the bill as drafted.

Cranbrook meadow

We were sorry that the application to register the Long Field at Cranbrook in Kent as a village green was rejected following a public inquiry last September.

The 5.2-acre Long Field is on the north-east side of Cranbrook. It originally formed part of the ecclesiastical estate of Canterbury and is marked on an 1839 tithe map as parish glebeland. It is crossed by two public paths.

Local people made the application in 2008 when they realised the green, which they and their predecessors had enjoyed for over 60 years, was under threat of development for a care home. A fence was erected, preventing public use. The land is owned by Kent County Council. The application was referred to an independent inspector, Martin Elliott, who rejected it.

Long Field in springtime.

Says Annie Oulton, a witness at the inquiry: 'The inspector said there was not enough variety of use for the land to qualify as a village green, the main occupation of users being dog-walking. In fact we had examples of many other activities. Families play here in summer and winter, and people go blackberrying, have picnics and fly kites.

'This land has been open to the community for over 60 years. It would be tragic to lose it.'

Brecon Beacons fence

With Ramblers Cymru and others we rejoiced at the removal of the four-and-a-half-mile fence which marched across the fine open commons of the Brecon Beacons National Park. This followed a six-year campaign. The fence was erected during the foot-and-mouth outbreak as a 'temporary' measure and should have been dismantled in 2005.

Agencies in England and Wales

We took an early opportunity to meet Emyr Roberts, chief executive of the new environmental body in Wales, Natural Resources Wales (a combination of the Countryside Council for Wales, Environment Agency and Forestry Commission). Our general secretary was accompanied by OSS activists Jay Kynch and Beverley Penney, and we were able to tell Emyr of our work and to emphasise the importance of commons to the landscape, ecology and history of Wales.

Meanwhile in England we have responded to the Department for Environment, Food and Rural Affairs' consultation on the triennial review of the Environment Agency and Natural England, stressing the value of NE's work on recreation, access and public

engagement, as well as commons. We have said we need a strong, independent body, able to champion the cause, and we oppose any merger of EA and NE as we fear vital public-interests would lose out.

Gembling correction

We regret any upset caused to our members, the Gembling Commons Management Association, following publication of the article 'Turmoil on the common' in *Open Space* autumn 2012.

The members concerned have pointed out several inaccuracies in this article and confirm that Gembling common is a privately-owned, actively-grazed common with its own correctly functioning management committee, and that no unlawful activities have been carried out by the commoners.

Dick Hutchins—access man

RN (Dick) Hutchins (1915-2013) has died aged 97. He joined the society in the 1930s while studying law at the London School of Economics. There he learnt about the campaigns for the right to roam (then gathering a head of steam) which inspired him to join us. He also joined the Ramblers in its foundation year, 1935, and walked in the countryside most weekends.

After the war, in which he served as a staff officer in Britain, he became assistant solicitor to Derbyshire County Council. When the seminal National Parks and Access to the Countryside Act 1949 was passed he wrote a learned commentary on it, which was published by Butterworths in 1950. This is still a valuable reference book today.

Dick was responsible for Derbyshire's survey of public paths under the 1949 act, recording nearly 3,000 miles of paths and claiming all the canal towpaths. He also established the High

Dick Hutchins at Ardnagashel on Bantry Bay, Ireland, where he lived for the first six and last six years of his life. Photo: Georgie Goddard.

Peak and Tissington trails in and around the Peak District.

As lawyer to the Peak District National Park Planning Board he did the legal work for access agreements for about 70 square miles of the park. (The access provisions of the 1949 act were barely implemented outside the Peak.) Half a century later Dick was delighted to attend the second reading in the House of Commons of the Countryside and Rights of Way Bill, on 20 March 2000, which gave much greater freedom to roam.

Dick walked the Pennine Way in 1952, after it had been approved by the Minister of Local Government and Planning, Hugh Dalton, but before any signs went up. He wrote about it in our *Journal* of November 1952 and was a great advocate of this long-distance path, which was not to be opened for another 13 years.

Treasurer

We still have a vacancy for a treasurer. Would anyone who is interested in filling this post please let us know. Details are on the recruitment page of our website, or we can post them to you.

Dick leaves a son and a daughter and three grandchildren who have inherited his love of the outdoors.

Centenary donation

Last October Brian Keates, secretary of the Coventry CHA Rambling Club, a long-standing member of the society, wrote to us as follows: 'Your legal-fund appeal was opportune for us because we have just celebrated our 100th anniversary and we could think of no better way of making a contribution towards our aims of fostering and promoting walking and a love of nature and the open air than a donation towards the legal fund.'

Congratulations to the club on its centenary, and thanks for the donation.

Two new volunteers

Welcome to two new local correspondents: Brian Cowling for Bedford Borough, and Chris Smith for Lewes District in East Sussex and Brighton & Hove City.

Brian worked as a rights-of-way officer for Bedfordshire County Council and then Bedford Borough Council when it became a unitary authority. He recently surveyed, as a volunteer, the local rights of way for the council. He says that he looks forward to pressing the council to focus on its rights-of-way duties instead of threatening to cut its small path-team still further.

We fight back appeal
Our 'We fight back' appeal has raised over £7,000. Thank you for your generosity.

Chris has been an activist for the last 40 years. Since 1987 he has been involved in the campaign to win the right to roam on open country. A former member of the Ramblers' Association's executive committee, he is press officer and footpath secretary for two parishes for the Sussex Ramblers. He works in Lewes as a housing-benefit consultant.

If you are interested in becoming a local correspondent for the society, please visit the recruitment page of our website.

Our new look

You'll have spotted our new logo and design, previewed at our AGM last year, and we hope you like them. Our previous logo, created by our then deputy secretary, Duncan Mackay, 30 years ago, has served us well—but we felt it was time for a change.

Still hope for Crystal Palace

The Crystal Palace Community Association (CPCA), a member of the society, has had a success. It has won leave to appeal against the high court ruling in favour of sacrificing Crystal Palace Park, Bromley, for commercial development (*OS* autumn 2012 page 8).

The appeal court will hear the case in the summer.

Common speed-limits

In response to a Department for Transport consultation on the revision of its speed-limit circular, we have called for a universal speed-limit of 40 mph where unfenced roads cross commons.

The Department favours a speed limit of 40 mph for roads 'with a predominantly local, access or recreational function' and we argue that roads across common land come within this definition. Speed limits would enable both the land to be grazed without ugly fencing and people to walk and ride there free from the risk of speeding traffic.

With a universal speed limit, motorists would know that commons are special. Of course the limit would need to be enforced, with some high-profile prosecutions of offenders. ❐

Path Issues

The path to the camp

The order to divert Mud Lane, a public bridleway at Purton, Wiltshire (five miles north-east of Swindon), attracted 39 objectors, including the society and the Ramblers. There was a public inquiry last November.

The existing route is 410 metres long, a sunken lane leading to Ringsbury Camp, an iron-age fortress. The path is overgrown and obstructed. The proposed diversion was an existing track running parallel, about 50 metres to the north, and had been provided by the landowner as a permissive bridleway.

The inspector, Barney Grimshaw, ignored the obstructions in assessing the diversion. The order was made in the interests of the landowner and the public. The inspector found it to be expedient in the interests of the landowner, because it would enhance his security and privacy and facilitate the management of his land.

Interests of the public

He then considered the interests of the public. The order-making authority (OMA), Wiltshire Council, argued that the proposed route was drier, more level and less liable to flooding or overgrowth than the existing route. The objectors said that if the existing route was maintained to an appropriate standard, it would be more enjoyable and have few disadvantages.

The OMA also said that opening up the existing bridleway would require considerable public expenditure, estimated in 2008 to be over £148,000. The total budget for rights-of-way maintenance in Wiltshire was only £176,000. It could not justify this expenditure when a reasonable alternative could be made available at no cost to the public purse.

The objectors said the OMA had a duty to maintain the highway so the expenditure was expedient. Also, the OMA was grossly overstating the cost, for which the Ramblers had obtained an estimate of about £30,000. The inspector noted it would require significant public expenditure to restore the route. He concluded that the diversion would not be expedient in the interests of the public. However, the order was still capable of confirmation provided it was found to be in the interests of one of the parties, ie the landowner.

Convenience

On convenience he considered that the proposed diversion would not be substantially less convenient to the public, it was only 35 metres longer and only marginally less direct.

However, the order failed on the test of the effect on public enjoyment of the way as a whole. The inspector concluded that 'the loss of such an historic route as the existing bridleway would have a serious negative effect on the enjoyment of many current and potential users of the right of way'. It is pleasing that the inspector gave full recognition to the historic value of this route. (*Ref FPS/Y3940/4/8, 11 Dec 2012*)

Halling link

Congratulations to our local correspondent in Medway, Maggie Coleman, and to other campaigners over many years. They have won an important

link in the path network on Halling Marsh, close to the River Medway. The 580-metre-long path will fill the gap in an attractive circular walk.

The decision to confirm the definitive map modification order was made by inspector Mark Yates following a public inquiry last summer when 16 people gave evidence. The order was opposed by the Kent Wildfowling and Conservation Association which had owned much of the route since 2004 and shoots here.

Sufficient

The inspector concluded that the evidence of users between 1985 and 2005 was sufficient to demonstrate that the route was a highway. The landowners had not taken sufficient action to indicate to the public that they did not intend the route to be dedicated.

Says Maggie, who lives in Halling: 'Eight years ago the shooting club bought some land in the village and closed off the footpath which had been used by residents for up to 60 years as part of a walk around the marsh. The club erected metal posts and barbed wire across the path. We are delighted to have our footpath back at last.' (*Ref FPS/A2280/7/5, 12 Dec 2012*)

Defeat at Plympton

We were sorry that Plympton St Mary footpath 2, which runs through the grounds of the Ridgeway School, has been closed after a long campaign. An order was made by Plymouth City Council, under the 'school provisions', section 118B(1)(b) of the Highways Act 1980. John Emery and John Skinner, members of the society, appeared as objectors at the public inquiry last October.

The inspector Paul Dignan had to be satisfied that it was expedient to close the route to protect pupils and staff from violence or the threat of violence, harassment, alarm or distress. He had to consider any other measures that have been or could have been taken for improving the security of the school; whether closing the path would substantially improve the security, and whether there was a reasonably convenient alternative route.

Security problem

The order route links Moorlands Road on the eastern side to Geasons Lane on the west. The inspector was satisfied that the school had provided sufficient evidence that the footpath was a security risk. The objectors said that reinstating missing sections of wrought-iron railings would address the security problems, but the inspector said this would severely compromise safe movement around the grounds. The objectors also considered that closure of the path would not significantly improve safety since there would still be public access from the western side along Geasons Lane. However, the inspector disagreed, saying that closure meant there would be no through route.

He recognised that the order route was well used by local people to gain access to community facilities, but considered that the Ridgeway to the south would be a satisfactory alternative, although it is busy and crowded. Overall, an unfortunate result. (*Ref FPS/N1160/3/1, 14 Nov 2012*)

Golf-course diversions

Our local correspondent for Taunton Deane, Paul Partington, was among the objectors at a hearing last October. The order, made by Somerset County Council, was to divert two footpaths at Oake Manor golf course, near Taunton. The inspector, Mr D Isaac, rejected the order.

The existing routes run from Oake Manor

in a direct line eastwards whereas the proposed diversion would have taken walkers on a circuitous path. Mr Isaac refused the change because it brought walkers closer to the driving range, putting them at risk, and there was an awkward crossing of a stream with a steep slope, stile and narrow bridge.

Paul is delighted with this result but remains concerned that one of the paths is obstructed at the boundary of the golf course, and there are misleading maps of the paths on the golf course. He will continue to press Somerset County Council to put all the paths in order. (*Ref FPS/D3315/4/36, 6 Nov 2012*)

Kilvey Hill campaign

Unusually, we opposed the creation of public footpaths at a recent public inquiry. The order was made by Swansea Council to create seven public footpaths on Kilvey Hill on the east side of Swansea. Our local correspondent Jay Kynch appeared with the British Horse Society (which employed consultant George Keeping) and other objectors at the inquiry last October.

Our main reason for objecting was that all the paths were already public highways, of a higher status. Evidence of use, by walkers, riders, cyclists and carriage-drivers had been submitted by local people to the council. However the council claimed that there was doubt about the status of the routes and the

Kilvey Hill welcomes all. Photo: Richard Williams.

On Kilvey Hill. Photo: Richard Williams.

inspector, Sue Arnott, accepted this. She agreed that there was a need for the proposed footpaths, notwithstanding that unrecorded rights might exist.

Says Jay Kynch: 'This is a disappointing decision. Many restricted byways were omitted from the orders, threatening to destroy the special, historic, horse-driving culture of the area.'

We hope that the local users will persist in their claims that paths on the hill should be recorded as byways and bridleways. (*Ref B6855/W/2011/515568, 6 Nov 2012*)

Tanneries path reopened

With help from Lichfield Civic Society and our local correspondent Harry Scott, our member Lorna Bushell has succeeded in reopening the Tanneries at Lichfield, Staffordshire. This path runs between Tamworth Street and Cross Keys, which was boarded up for two years after the demolition of a neighbouring property.

Local people began gathering evidence of use to claim the route as a public highway, and then discovered that in 1978 Litchfield District Council had entered into a deed with Kwik Save group, the adjoining owner, with a binding legal agreement linked to the buildings to maintain the Tanneries as a public right of way.

The subsequent owners, Metier, removed the barriers last November.

Reviews

Rights of Way: Restoring the Record by Sarah Bucks and Phil Wadey (£30 + £4.50 post and packing, with £3 discount for OSS members, from Bryants Farm, Dowlish Wake, Ilminster TA19 0NX, or see *www.restoringtherecord.org.uk*).

In the Countryside and Rights of Way Act 2000, parliament decided that in 2026 old, unrecorded ways should be extinguished, to provide certainty to landowners. It allowed 25 years for the record to be brought up to date. The plan was to have an accelerated process for researching and claiming routes which relied on historic evidence.

We are now halfway to 2026 and little progress has been made. The research programmes got bogged down and we await legislation to speed up the claims process, based on the agreement of the stakeholder working group on unrecorded rights of way. Time is running out.

Welcome

Thus *Rights of Way: Restoring the Record* is extremely welcome. It spells out clearly how to go about researching historic ways and claiming them for the definitive map.

The authors are advocates of the maxim 'time spent in reconnaissance is never wasted'. They start with a chapter on organising your research. Then they go through the standard sources for documentary evidence, awarding stars according to the extent to which the evidence is likely to satisfy the basic evidential test for a public highway. Each record is described in detail, with ample photographs to help you.

Then they advise on making the application for a modification order, finishing up with a list of helpful hints and practical suggestions, to save time and stress.

This step-by-step guide brings path claiming to life and will, we hope, inspire a new generation of researchers to get out there well before the deadline.

Wildlife in Trust, a hundred years of nature conservation by Tim Sands (The Wildlife Trusts, £25). Tim worked for the Wildlife Trusts and its predecessor body for 30 years and knows the subject thoroughly. The first section describes the colourful history, starting with the meeting, on 16 May 1912, of Charles Rothschild and three others, which led to the formation of the Society for the Promotion of Nature Reserves.

Robert Hunter
This year is the centenary of the death of Robert Hunter, the society's solicitor 1868-82, who saved many commons from destruction. We hope to celebrate his life during the year.

Part two consists of separate chapters on each wildlife trust (roughly county-level) by local experts, with the highlights since their establishment.

The final section is an A-Z of people, places and issues, such as the common-land campaign. This is a fascinating record of a vital movement. **KA**

Open Spaces Society Training Courses

We are pleased to offer training courses on common land and village greens.

Common land

Topics covered include:

- an introduction to commons and why they are important,
- relevant legislation,
- good practice for developing ideas for the management of commons based on the Open Spaces Society's ground-breaking publication, *Finding Common Ground,*
- practical solutions to problems such as car-parking, encroachment and vegetation.

Village greens

Topics covered include:

- an introduction to village greens and why they are important,
- how to register land as a new green using the evidence process,
- the implications of the Growth and Infrastructure Bill for the law and procedures for registering land as new greens.

Fees

Training courses can be tailored to your requirements. Our fees are negotiable so please call us to discuss. We offer a discounted fee to members of the society. Contact the society on 01491 573535 or email *ellenfroggatt@oss.org.uk*.

Rights of Way: Restoring the Record

- Want to check historic rights on a track but don't know where to start?
- Need to find extra evidence before a public inquiry?
- Worried about your first visit to an archive office?
- Experienced, but just want to check which Act authorised which activities?

Then you need **Rights of Way: Restoring the Record**, the new research guide by Sarah Bucks and Phil Wadey (see review opposite).

This book is an essential guide for the novice, and an invaluable reference book for the more experienced. It will appeal to user groups, local authority rights of way practitioners, land agents, land owners and property lawyers, as well as local historians and those interested in their part of the countryside.

Full details at *http://www.restoringtherecord.org.uk/* including how to buy. Cover price £30 with a 10% discount for OSS members.

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.

Subscription rates from 1 January 2013

Individuals: ordinary £33 / joint ordinary £50 / life £660.

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

National organisations; district and borough councils: £165.

County councils and unitary authorities: £385.

Registered in England and Wales, limited company number 7846516
Registered charity number 1144840

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