



Finding common ground

**Integrating local and national interests on commons: guidance
for assessing the community value of common land**



Downley Common in the Buckinghamshire Chilterns.

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About this report

This work was commissioned by Natural England and funded through its Major Project on Common Land. The objective of the work, as given in the work specification, is to identify mechanisms to recognise and take account of local community interests on commons, hence complementing established criteria used in assessing national importance of land for interests such as nature conservation and landscape. The intention is not that community interests should be graded or weighed and balanced against national interests, but rather that they should be given proper recognition and attention when considering management on a common, seeking to integrate local and national aspirations within management frameworks. Specifically, the purpose of the commission was to provide information to enable the user or practitioner to:

- i be aware of issues relating to the community interests of common land,
- ii assess the importance of common land to local neighbourhoods,
- iii engage with communities and understand their perspectives,
- iv incorporate community concerns in any scheme examining the future and management of commons.

The advice and views presented in this report are entirely those of the Open Spaces Society and its officers.

About the authors

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About the Open Spaces Society

The Open Spaces Society, formerly known as the Commons, Open Spaces and Footpaths Preservation Society, was founded in 1865 and is Britain's oldest national conservation body. It campaigns to create and conserve common land, town and village greens, open spaces and public paths, in town and country, throughout England and Wales. It is a registered charity. Its members include individuals, organisations and local authorities at all levels.

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Cover photo: Walkers from the weekly 'Simply Walk' project enjoy the fresh air and scenery of Downley Common in Buckinghamshire. Photo: John Willson.

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An American poet on the commons of England

I like your name; I like the way you keep
Old thorns and brambles, broom and golden furze,
And little footpaths, and your villagers,
And woodbine bowers that are cool and deep.
I like your prams where rosy children sleep;
Your sand heaps and your tangled weeds and burs,
Your skylarks, and all life that in you stirs,
And all the lovely clouds that o'er you sweep.
I like the way men use you, lying prone
Upon your turf, or at some merry game
Of ball, or taking kindly in your name
The right of freemen. You have ever known
The joy of life; the spirit of the free,
And as you are so may you ever be.

Ingram Crockett

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Summary

Commons are unique. People value them for all sorts of reasons. There is no other type of land in which so much public interest is concentrated. This is why commons must be treated with respect and understanding.

A staggering number and many thousands of hectares of commons are designated as national or international sites, for their wildlife, landscape or archaeological interest—and nearly all are available for public access by right. The designations bring with them targets and guidance on how to achieve them. There are no such formal checklists for local people and local interests, yet their interest in commons is just as important.

Consequently, under pressure to get things done and to meet funding deadlines, there is a danger that the community's interests will be overlooked. This guidance explains how the values which local people place on commons can be identified and integrated with national and international criteria.

Plans for grazing, for scrub-clearance and tree-felling, for instance, can all meet opposition unless the community is involved in their making. Fencing, which may be desirable to enable the common to be grazed, is a physical and a psychological barrier. It can change the nature of the common, is often highly controversial and should be a last resort. It is best that it is tested, with pilot plots to see if it will have the desired effect; it can be mitigated by sensitive siting or removal of barbed wire. Plentiful access-points are essential.

This guidance shows, through case studies, how to identify the people who care about a particular common, and how to involve them in plans for its future. We make it clear that you should not undertake works on a common lightly. You must take time to understand why the community values its common and how to accommodate everyone's wishes.

If you persevere and win agreement, the common will be sustained—a joy for ever.

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Introduction

There are over 7,000 registered commons in England, covering a wide range of landscapes, geological formations and habitats. They are a remarkable survival from pre-mediaeval times, and are important for their environmental, socio-economic, cultural, landscape, historical, archaeological and social benefits. With copious local, national and international designations, commons probably deliver a wider range of public benefits than any other category of land in England.

Common is land where the owners of certain properties have rights, to graze, collect wood or dig peat for instance, in common with the landowner. Many commons were lost during the inclosure movement leaving a mere remnant. From the mid-nineteenth century the recreation value of commons was increasingly recognised and this was reflected in legislation from 1866 to 2006.



Commoners' cattle on Bridestowe Common, Dartmoor National Park.

The old practice of exercising common rights, as an essential adjunct to the personal economy of those with rights, has declined in many areas as lifestyles change. This is particularly marked in lowland England and has led to changes in vegetation and habitat as commons have become scrubbed over or covered in trees. At the same time their value for recreation has increased. For many people, access to their local common has been a part of their daily life since childhood, providing fresh air, a sense of belonging and identity and somewhere to take daily exercise or walk the dog, on land which feels as though it has remained unchanged for centuries.

Herein lie potential conflicts. When it comes to managing the common there are many legitimate interests to be considered and, because commons are so treasured, for so many reasons, local people have strongly-held views about what they believe should happen—or not happen—there.

In 2003, the Open Spaces Society became so concerned about applications to fence commons on grounds of protecting biodiversity and habitat, with no

clear processes in place for taking account of the public and community interest, that it sought a meeting with the then chairman of English Nature, Martin Doughty. The result was that the Natural England founding bodies, together with the National Trust and the Open Spaces Society, commissioned 'A Common Purpose'¹ to provide guidance to common-owners and managers on how to work with stakeholders when preparing a long-term management plan for a common.

Conflicts may arise between national and community interests. Many commons have been designated for national and international conservation purposes, or are included within areas so designated. In these cases national pressures to meet designation targets may be applied and managers may be encouraged to follow regimes which are contrary to local wishes. The introduction of grazing for biodiversity may conflict with dog-walkers and horse-riders, and fencing may be unpopular with those who have always appreciated the common as an unenclosed landscape; tree-felling to restore heathland may cause an outcry among those who favour woodlands.

The public interest in sites designated for nature-conservation value can be measured more or less objectively against criteria in legislation or government guidance: there are clear outcomes which have been set for the land. But local interests have no recognised criteria against which they can be judged and there is a danger that local people may not be heard and may lose out when decisions are made about management of commons.

This guidance identifies mechanisms to enable local community interests on commons to be given full consideration and recognition, alongside the national interests, in planning the management on a common.

Notes

- 1 Short, C. Hayes, E. Selman, P. & Wragg, A., 2005. *A common purpose: a guide to agreeing management on common land*. Countryside and Community Research Unit, University of Gloucestershire, for the Countryside Agency, English Nature, National Trust, Open Spaces Society and Rural Development Service Defra. This has been revised and endorsed by Defra's National Common Land Stakeholder Group in 2012. It is on the Foundation for Common Land website at <http://www.foundationforcommonland.org.uk/commons/a-common-purpose-guide>

1 Quick guide to common land

This section gives a brief introduction to the law of commons.

What is common land?

1.1 All common land has an owner but it is distinctive in that other people, the commoners, also have rights there. Those rights are normally attached to named properties and include—

- **grazing:** cattle, sheep, ponies, goats, geese or other livestock,
- **pannage:** grazing pigs on fallen acorns or beechmast,
- **estovers:** collecting wood for fuel or repair, and bracken for animal bedding,
- **turbary:** cutting peat for fuel,
- **piscary:** fishing,
- **common in the soil:** taking sand, gravel, stones or minerals.

1.2 In addition, the public has the right to walk and ride (horses) on all ‘urban’ commons¹ and those subject to a deed of access under section 193 of the Law of Property Act 1925. Under the Countryside and Rights of Way Act 2000 the public was given a right to walk on all commons not already subject to access rights.

Registration

1.3 The 1965 Commons Registration Act required all common land, the owners and the common rights to be registered. The registers are held and maintained by the registration authorities (county, unitary and metropolitan borough councils). A few commons, such as the New Forest, Epping Forest and the Forest of Dean, were exempt from registration.

1.4 There was no procedure under the 1965 act for vesting land with no known owner in a local authority. However, section 45 of the Commons Act 2006 provides that any local authority in whose area an ‘ownerless’ common is situated may take such steps against unlawful interference as an owner in possession of the land could take.

Works

1.5 If anyone wants to undertake certain types of works on common land, he must obtain the consent of the Secretary of State for Environment, Food and Rural Affairs, under section 38 of the Commons Act 2006. The Open Spaces Society is a statutory consultee for all such applications. The applications are handled by the Planning Inspectorate. This is covered in more detail in section three.

1.6 If works are erected without consent, no one has a duty to take enforcement action but anyone, including members of the public, may apply to the county court for an order for the removal of the works (Commons Act 2006, section 44).

Exchange

1.7 An owner of common land can apply to the Secretary of State for Environment, Food and Rural Affairs for land to be removed from the register. If the area is more than 200 sq m, he must provide land in exchange, and in deciding whether to allow the exchange, the secretary of state must have regard to the various interests in the common, including those of the neighbourhood and the public (Commons Act 2006, section 16).

Notes

- 1 Section 193 of the Law of Property Act 1925, which gave the public the right to walk and ride on commons, applied to commons situated wholly or partly within a borough or urban district as at 1 January 1926—and it still applies to the land thus covered today.

Bibliographical references and further reading

Clayden, Paul., 2007. *Our common land*. 6th ed. Henley-on-Thames: The Open Spaces Society.

2 Origins and connections with communities

This is a quick canter through the history of common land to show how the relationship between commons and communities has changed—but become no less important.

2.1 Through history common land has been important to communities but that relationship has changed with time. It started as essentially an agricultural one, supporting needs for shelter, warmth and food. Commons still fulfil this need to some extent in upland areas, but in the main the relationship between communities and their commons has become centred on enjoyment and recreation.

2.2 Commons are a remarkable survival from pre-mediaeval times. There are now just under 400,000 ha (about the size of Suffolk) of common land in England, but this is a fraction of the extensive area of common lands of the past.

2.3 Although all commons are owned, their ownership is subject to the rights of others, the common-right holders. These rights were once much more extensive, and probably predate private-property rights. For instance, the northern and western moorlands have been occupied since the early Bronze Age with grazing stock and hunted animals.

2.4 Today's place names contain the key to past uses of land. 'Somerset' means 'land of the summer dwellers', people who occupied the lowland moors and marshes for summer grazing only. 'Sherwood' was 'the Shire Wood', a tract of woodland with clearings and open glades which was common to the county of Nottinghamshire.

2.5 There is evidence in the seventh-century CE records of an open-field system of agriculture, with common meadows and common pastures. As the population gradually increased, the waste was reclaimed for arable cultivation. The villages along the Wash practised inter-commoning on marshes which at first could only be grazed in summer; later they were reclaimed by dykes, making them usable year round. The inhabitants of Cricklade in Wiltshire have

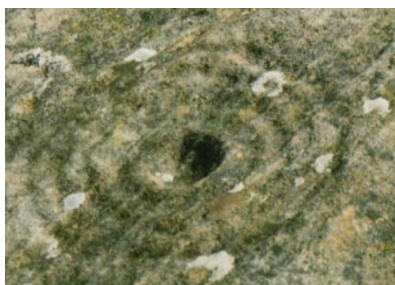


Cricklade North Meadow in Wiltshire: a National Nature Reserve and Special Area for Conservation, it is one of the finest lowland hay-meadows in Europe.

managed North Meadow for centuries. After the hay crop is taken each year, the common is used by local inhabitants for grazing.

2.6 Common land, and the concept of rights similar to those we understand today, may have been in existence by the seventh century. The change in the status of common from public to private land is evident as far back as the ninth century and was probably the result of the imposition of manorial organisation upon the earlier English community.

2.7 By the time of the Domesday Book (1086) the great majority of villages and hamlets known today had come into existence. Today's names reflect the terrain on which they were founded. Heathfield and Heathcote; Farnham, Fairlight and Faringdon; Leafield and Woodley reflect origins in heather, areas of fern and bracken, and woodland clearings respectively.



Prehistoric cup-and-ring mark on Barningham Moor Common, County Durham.

2.8 The process of appropriating common land to particular manors had been largely completed by the early thirteenth century. Only in those parts of England where common land formed a particularly significant part of the community's land—such as in the hills and on the Lincolnshire marshlands—did inter-commoning remain, though even here the uses were strictly defined and the soil of the commons was regarded as belonging to the lords of the manors involved.

2.9 At the time of Domesday, the population of England and Wales was 1.5 million, but by the eve of the Black Death (1348) it had more than doubled. Woods had been felled and converted to arable fields, marshes and fens drained and cultivation was creeping up the sides of the high moors. In the lowlands the pressure was great, but the commons were so important that each village had to decide for itself how far it could sacrifice its own common pasture to grow more corn. In some places the common was diminished to such an extent that a system of rationing common-pasture rights, known as stinting, was introduced. The number of animals that could be pastured on the common or on the open fields after the harvest was limited to the number kept on each man's farm during the winter. This marked a definite stage in the limitation of common rights.

2.10 Another definite stage in the uncertain history of commons was the Statute of Merton in 1236. This clarified things: it confirmed that the lord of the manor genuinely did 'own' the land, that the rights of the commoners must not be compromised and that, whatever land the commoners did not need, could be inclosed. It also enabled the establishment of coppice woodlands at a time when woodland was being eliminated by grazing animals.

2.11 The Black Death reduced the pressure on the commons, but the rise in population during the sixteenth century led to a renewed onslaught. The development of London was such that it triggered the first statute designed to prevent commons and waste grounds from being inclosed¹ for any purpose. This was passed in 1592² and applied to land within three miles of London, in recognition that Londoners needed their commons for recreation and this was probably the first time that commons had been valued for other than economic reasons.

2.12 The rest of the country was less fortunate, and commons continued to disappear. Some were inclosed by agreement between landowner and tenants, others without any consultation at all. Often there were violent reactions, as in Kett's rebellion of 1549 when thousands of rebels met on Mousehold Heath common, near Norwich, to demand an end to inclosure. Some were armed with simple weaponry; they were slaughtered by the King's Army and mercenaries. In 1606, a London merchant inclosed part of a common wood near Canterbury and built houses around it. Local people destroyed one of the new houses.

2.13 In 1607 Gateward's case³ established that rights of common must attach to a particular property and cannot exist for the benefit of a shifting and uncertain group of people. This was important in establishing the basis of common rights today.

2.14 In the early eighteenth century the practice of landowners applying to parliament for private and local acts to inclose commons began. Commissioners allotted the land, theoretically being fair to all. It was not so in reality. The acts were mostly landowners' charters, enabling them to engage in more 'efficient' and more profitable agriculture. Peasant proprietors were squeezed into small allotments of land, often not enough to provide a living. The process of inclosure was often secretive and confined to the local élites. Independent peasants became landless labourers.

2.15 By the time of the Inclosure Act 1845, there had been more than 4,700 individual inclosure acts, and the amount of commonable land inclosed under them is estimated as somewhere between two and three million ha.⁴

2.16 People complained and at

To the enclosure of the common more than to any other cause may be traced all the changes that have subsequently passed over the village. It was like knocking the keystone out of an arch. The keystone is not the arch; but, once it is gone, all sorts of forces, previously resisted, begin to operate towards ruin, and gradually the whole structure crumbles down. This fairly illustrates what has happened to the village, in consequence of the loss of the common.

From *Change in the Village* by George Bourne (c1912).



Hawkerland Common on the Pebblebed Heaths near Sidmouth in east Devon.

last parliament was compelled to intervene. The Inclosure Act 1845 introduced the idea that inclosure was the concern of all local inhabitants and not only of the lords and the commoners. It divided commons into two categories, those which could, and which could not, be inclosed without parliamentary sanction—though in

1852 it was enacted that no inclosure of either type could take place without parliamentary sanction. The 1845 act required independent commissioners to conduct local inquiries. It also provided that the lord and former commoners would each receive a freehold parcel of land in compensation for the loss of rights and inclosure, with land left for communal use. However, in the following 24 years, about 250,000 ha were enclosed and only 1,600 allotted for the benefit of the poor or recreation.⁴

2.17 With the import of corn from America, less common land was turned over to arable and the struggle shifted to the expanding towns. In 1865 the Commons Preservation Society (now the Open Spaces Society) was founded by such public-spirited reformers as Lord Eversley (later a Gladstonian minister), Sir Charles Dilke (the radical MP) and John Stuart Mill (the philosopher). Other activists were the housing reformer Octavia Hill and Sir Robert Hunter who later launched the National Trust.

2.18 The society's original aim was to prevent the development of commons in the London area and it celebrated an immediate victory: the Metropolitan Commons Act 1866 which excluded from inclosure any common in the Metropolitan Police District (a radius of 24 km from Charing Cross).

2.19 It went on to save numerous commons, by raising funds to buy them, campaigning for legislation and defending the rights of commoners through the courts.

2.20 When Sir Thomas Wilson, lord of the Manor of Hampstead, threatened to build on the Heath, the Commons Preservation Society raised money for the legal case. This was so prolonged that Sir Thomas died before its completion. His more public-spirited successor, Sir Spencer Maryon Wilson, transferred his rights to the Metropolitan Board, and so the land was saved.

2.21 In 1866, Earl Brownlow, owner of Berkhamsted Common, Hertfordshire, enclosed it illegally with iron fencing. The Commons Preservation Soci-



Richard Mabey, nature writer and vice-president of the Open Spaces Society, points to the route taken by the navvies from Tring Station to Berkhamsted Common in 1866.

ety helped organise a trainload of navvies with hammers, chisels and crowbars. They arrived at Tring Station, three miles from Berkhamsted, at 1.30am. By 6am the two miles of fencing had been removed—for ever.

2.22 In Epping Forest a family of commoners, the Willingales, insisted on exercising their rights to lop firewood in parts of the forest which had been illegally enclosed in 1865 by the lord of the Manor of Loughton, the Reverend William Whitaker Maitland. By the mid-nineteenth century, nine-tenths of the forest, once part of the extensive Waltham Forest, had

been enclosed. The Commons Preservation Society successfully brought a lawsuit in the name of Thomas Willingale on behalf of Loughton's inhabitants. In the 1874 judgment the lopping rights were upheld and Maitland and the other offenders were ordered to remove all the fences erected since 1851. Later, the Corporation of London, which owned much of the forest, bought out the lords of the manors and the commoners to preserve the land for the enjoyment of Londoners.

2.23 The Commons Preservation Society's efforts in parliament won the Commons Act 1876, which introduced an important new concept, of regulation of commons rather than inclosure. The act enabled the inclosure commissioners to approve applications to regulate commons, which revived the idea of local involvement in the running of a common through boards of conservators, appointed by local interests in the common and the local authority. When an application for inclosure of a common was proposed under this act there was a similar provision to that in the 1845 act—a requirement to consider evidence of 'the benefit of neighbourhood', the short form for the words used in the 1845 act. We examine the interpretation of this vitally important phrase and its lasting effect on commons in the next section.

2.24 The Commons Act 1899 allowed local authorities to manage and regulate commons where recreation was the main use. Such schemes gave local people a legal right of access, which in practice extended to the general public.

2.25 A great victory for the Commons Preservation Society (by now the Commons and Footpaths Preservation Society) was the amendment introduced into the Law of Property Act 1925 (whose main function was to simplify conveyancing) to give the public for the first time a right of access to all urban⁵ commons (clarified in 1998⁶ as a right for walking and horse-riding) and to

control fencing and other works on common land. The act also enabled landowners to grant deeds of access over rural commons in return for better controls over anti-social activities. The society prepared model forms to encourage landowners to grant access, and within two years 17 commons totalling 2,000 ha had been opened to the public by deed.

2.26 But knowledge of commons continued to be hazy, frustrated by the lack of an official record. In 1955 a Royal Commission considered the matter. An erudite team of lawyers, geographers, historians and planners toured England and Wales, hearing evidence. Their 1958 report⁷ made three important recommendations: all commons should be recorded on registers, open to the public as of right, and properly managed.

2.27 The first recommendation was implemented in the Commons Registration Act 1965, though the time allowed for registration was far too short, so that many commons which should have been registered were not, and others were registered which should not have been. Then there was a long hiatus until 1978 when the Department for Environment and Ministry of Agriculture published an inter-departmental report on commons⁸ in which they recommended implementation of the Royal Commission's remaining two recommendations. This was followed by the Common Land Forum,⁹ a gathering of all the interests in common land brought together by the Countryside Commission, which reported in 1986, again recommending legislation for access and management.

2.28 The recommendation for access was implemented in the Countryside and Rights of Way Act 2000 which gave the public the right to walk on all registered commons where there were not already rights. Finally, the recommendation for management was covered by part 2 of the Commons Act 2006, which provides for the creation of commons councils.

2.29 But there is still much to be done on the ground to ensure that our commons are properly recorded, enjoyed and managed to the benefit of all.



Thomas Willingdale Jnr: some of the Willingdales were unjustly imprisoned in 1866 for breaking down the Reverend Maitland's illegal enclosures in Epping Forest (see above). Photo: Open Spaces Society collection, the Museum of English Rural Life, University of Reading.

Notes

- 1 Inclosure is the extinguishment of common and other rights by legal process (usually an inclosure award), as distinct from enclosure which means the physical fencing of the land.
- 2 Restriction on Building Act 1592.
- 3 Gateward's case [1607] 6 Co Rep 59b.
- 4 Shaw-Lefevre, G., 1894. *English commons and forests*. Revised as Eversley, Lord, 1910. *Commons, forests and footpaths*. London: Cassell.
- 5 Section 193 of the Law of Property Act 1925, which gave the public the right to walk and ride on commons, applied to commons situated wholly or partly within a borough or urban district as at 1 January 1926—and it still applies to the land thus covered today.
- 6 *R v Secretary of State for the Environment ex parte Billson* [1998] 2 All ER 587
- 7 Royal Commission on Common Land 1955-1958 (Cmnd. 462) London: HMSO.
- 8 *Common Land: Preparations for Comprehensive Legislation*. Report of an interdepartmental working party 1975-77. 1978 London: Department of the Environment.
- 9 *Report of the Common Land Forum*, 1986. Cheltenham: Countryside Commission.

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3 Benefit of the neighbourhood: recognition in statute

This section traces the meaning of the words 'benefit of the neighbourhood' through legislation, and looks at the law relating to works on common land.

3.1 We have seen in the previous chapter the devastating effect of both the inclosures and the expanding urban population on common land from the beginning of the eighteenth century, and the subsequent increase in the demand for open space for recreation. This was reflected in legislation during the Victorian period which focused on regulation of commons rather than inclosure.

The Commons Act 1876

3.2 The main purpose of the Commons Act 1876 was, as Harris and Ryan (1967) explain, to facilitate the general management of the common, the appointment of conservators, the adjustment of rights with particular reference to overstocking, and the improvement of the land, including draining, manuring, levelling and planting trees. The result was usually the maintenance of existing use and the granting of public rights of access over the land. This was achieved by a provisional order which had to be approved by the inclosure commissioners or their successor, the relevant secretary of state.

3.3 The level of access provision varied. Some orders provided a general public right, some restricted the right to local inhabitants. In addition, the inclosure commissioners could insert certain conditions, such as a requirement to provide access to particular viewpoints, or to set out roads, bridleways and footpaths.¹

Benefit of the neighbourhood

3.4 In considering the expediency of any application for a provisional order under the Commons Act 1876, the secretary of state^{*} was required to consider whether the application would be 'for the benefit of the neighbourhood'. The 'benefit of the neighbourhood' was defined in the preamble to the Commons Act 1876 as '... the health, comfort and convenience of the inhabitants of any cities, towns or villages or populous places in or near any parish in which the land ... may be situate'.²

3.5 It was not for the minister to consider whether any application would be for the *future* benefit of the neighbourhood, but whether it had regard to the need for protecting the *existing* benefit to the neighbourhood arising from the common in its present state. In assessing the expedience of giving consent, he

^{*} References to the secretary of state are to the Secretary of State for the Environment or his predecessor.

could take into account any possible additional benefit that might result, but he would not give it priority as a consideration.

3.6 The 1876 act acknowledged that any enclosure would involve some form of encroachment and some interference with private interests, but did not require the minister to form an opinion that the proposed enclosure or works would be for the benefit of the neighbourhood and private interests, he merely had to take them into account. There is further discussion and interpretation in Clayden (2007, pp76-80). The need for parliament to confirm the relevant order, and the difficulty in satisfying the rights of the parties, led to the 1876 act provisions falling into disuse.

3.7 The tensions revealed in parliamentary debates³ and research⁴ identify the potential conflicts between central and local interests, ie the aim of delivering a vision of an ideal common, and the regulation needed to achieve this. The problem remains today of balancing the need to uphold a management framework (including statutory designations) with the needs of a local community and commoners.

Section 194 of the Law of Property Act 1925

3.8 In Appendix One we trace the development of the criteria in section 194 of the Law of Property Act. This section, which was replaced by section 38 of the Commons Act 2006, provided a high level of protection to common land. It required the secretary of state's consent to be given for 'the erection of any building or fence, or the construction of any other works, whereby access to land to which this section applies is prevented or impeded'.

3.9 The land to which the section applied was that which on 1 January 1926 was subject to rights of common, so it could include land which was not registered common and exclude some which was—but decades later it was hard to prove whether the land was subject to rights on 1 January 1926 or not.

3.10 The section applied to permanent and temporary works, but was somewhat vague about which works needed consent (for example, disturbance of the surface by ploughing), leaving scope for abuse.

3.11 The wording and the considerations for the secretary of state were very similar to those under the 1876 act in respect of the benefit of the neighbourhood. Under section 194 of the Law of Property Act, the secretary of state must 'have regard to the same considerations and shall, if necessary hold the same inquiries as are directed by the Commons Act 1876'. He also had to take into account any other relevant factors, including any objections.

3.12 The secretary of state was not required to consider whether any application for consent would be for the future benefit of the neighbourhood, but whether the application had regard to the need for protecting the existing bene-

fit of the neighbourhood. Where there was no apparent ‘benefit of the neighbourhood’ in an application it was likely to be refused.

How ‘benefit of the neighbourhood’ has been interpreted

3.13 Despite the continuity of the phrase ‘benefit of the neighbourhood’ in the legislation for more than 150 years, the interpretation was to a significant degree uncertain. This can be seen from the extracts from decisions by the secretary of state quoted in Appendix Two.

Section 38 of the Commons Act 2006

3.14 The Commons Act, section 38, repealed section 194 of the Law of Property Act 1925 and replaced it with updated and modernised provisions, which are clearer and more consistent.⁵

3.15 Restricted works⁶ on common land are prohibited unless they have the consent of the secretary of state. Restricted works are those which prevent or impede access, or the resurfacing of land. They include the erection of fencing, the construction of buildings and other structures, the digging of ditches and trenches, and the building of embankments. The section applies to all registered common land and some specified land which is not registered.⁷

3.16 The word ‘access’ is not defined in the 2006 act (nor was it in section 194 of the Law of Property Act 1925). Clayden (2007, pp 75-6 and 89) argues that since the purpose of section 194 was to control enclosures on commons, access should be given a wide meaning, ie access for any purpose.

Criteria for deciding an application for works

3.17 The criteria laid down in s39 of the Commons Act 2006, to be taken into account by the appropriate national authority (in England, the Secretary of State for Environment, Food and Rural Affairs) when determining an application for consent are widely drawn. Under section 39 the secretary of state

shall have regard to—

- the interests of persons having rights in relation to, or occupying the land (and in particular persons exercising rights of common over it);
- the interests of the neighbourhood;
- the public interest;
- any other matter considered to be relevant.

3.18 This means that the secretary of state must be satisfied that it is expedient to give consent having regard to the interests of the neighbourhood as well as to private and public interests in the common, and must also take into account any other relevant factors, including any objections. The decision will be based on the merits of the proposal and will balance all the interests in the common.

3.19 The public interest is defined as:

nature conservation;
 the conservation of the landscape;
 the protection of public rights of access to any area of land; and
 the protection of archaeological remains and features of historic interest.⁸

3.20 The secretary of state will view these criteria in the light of the overriding objective of protecting, maintaining or improving the common, and of ensuring that the overall stock of common land is not diminished.

3.21 Section 41 of the Commons Act 2006 allows anyone to bring proceedings to secure the removal of unlawful works or to secure compliance with the terms of a consent including, for the first time, individual members of the public.

Flexibility of section 38 of the Commons Act 2006

3.22 Under section 194 of the Law of Property Act, the secretary of state took the view that he could not grant consent with conditions (such as imposing a time limit), or approve an application with modifications. The Commons Act 2006 gives much greater flexibility. Under section 39 of the Commons Act 2006, the secretary of state can:

- give consent to all or part of the proposed works, with or without modifications;
- take into consideration any previous consent given under s38(1) or under s194;
- vary or revoke any modification or condition attached to a consent on the application of the person given consent;
- give consent to works which have been started or completed, with the consent running from the date on which the works began.

3.23 In addition, under section 38 of the Commons Act 2006, the applicant must follow a statutory procedure,⁹ and must notify specific organisations, including the Open Spaces Society. This was much less clear under section 194 of the Law of Property Act.

The National Trust and commons

3.24 A quarter of the National Trust's land is registered common (66,000 ha). The trust's founders were at the forefront of protecting open spaces for public enjoyment in the latter part of the nineteenth century, and many of its earliest acquisitions were common land. The sections of the National Trust acts which relate to commons reflect their importance for recreation and enjoyment.

Works on National Trust commons

3.25 The National Trust's powers to apply for consent for works are similar to those of other landowners, but with some important distinctions.

3.26 First, the works must be considered by the trust to be ‘desirable for the purpose of providing and improving opportunities for the enjoyment of the property by the public’.¹⁰ When considering an application for works the trust must be satisfied that there is no alternative management option that would achieve the desired objective. The trust is exempted from applying for consent for erecting and maintaining sheds for storing tools and materials.¹¹

3.27 The trust has an obligation to keep its commons ‘unenclosed and unbuilt on as open spaces for the recreation and enjoyment of the public’,¹² and it must therefore be particularly cautious about applying for works—which in any case are likely to arouse strong feelings among access groups and local residents. It is an essential part of the trust’s philosophy to involve local communities in its work.

3.28 In 2004 the trust, after consultation with the Open Spaces Society and many others, produced a policy guidance-note¹³ for its staff. This sets out internal procedures which are designed to achieve a more consistent approach than in the past. They are also intended to secure greater understanding of, and confidence in, the trust’s management decisions relating to its commons, by involving all those with an interest.

Exemptions: works not requiring consent

3.29 An entirely new provision, under section 43 of the Commons Act 2006, allows orders to be made exempting specific activities on common land from the requirement to obtain the secretary of state’s consent. They include temporary fencing for certain reasons, restricted in time and area; and obstacles to restrict vehicular access to commons. The exemptions must be explained on site and they are listed on the Planning Inspectorate’s website. More information is given in Appendix Three.

3.30 These provisions are useful for a pilot scheme, ie to test options for managing the common before applying for something more permanent.

3.31 Although there is no formal procedure for objections, it is sensible to consult local people and the statutory bodies listed for applications for works under section 38 of the Commons Act 2006, to ensure that people are both clear that the planned works are exempt and that they understand the need for them and are content. If works are carried out beyond the scope of the exemption, enforcement action could be taken.

Notes

- 1 Commons Act 1876 section 7.
- 2 It is worth noting that this follows the wording in the Inclosure Act 1845, which required the inclosure commissioners to take into consideration the ‘health, comfort and convenience’ of the local inhabitants before sanctioning any inclosure.

- 3 HC Deb 25 May 1876 vol 229 cols 1219-53.
- 4 Straughton, E. *Regulation of common land under the Commons Act 1876: central and local perspectives*. Working paper for International Association for the Study of the Commons (IASC) conference 2008.
- 5 Jim Knight, Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs, explained to the House of Commons Standing Committee D on the Commons Bill (Hansard, 27 April 2006, columns 110 & 111) the need for the changes in the law on works on common land, starting with an explanation of the works-control system:

The regime dates from the fundamental reform of property law undertaken in the early 1920s and culminating in the Law of Property Act 1925. Strong concern was expressed at the time that, as a result, commons would become closed to both commoners and the public and would turn by default into ordinary private land. The result of that fear was sections 193 and 194 of the 1925 Act. Section 193 introduced a public right of access for air and exercise to commons in urban districts and boroughs.

The original plan was to make all commons subject to those access rights, but that plan met opposition in the other place, so a compromise was reached that rural commons were not to be subject to express rights of access under the legislation. Instead, section 194 provided that, on all commons, fencing or works that would prevent or impede anyone's access were unlawful without the prior consent of the secretary of state. Section 194 has made such provision ever since, with the result that, by and large, a wonderful national resource remains largely open, unspoiled and suitable for the exercise of common rights and public enjoyment, and as a fantastic pool of landscape, wildlife and heritage features that I know all Committee members seek to celebrate and allow to continue.

The regime in part 3 is substantially the same as the one in section 194, which it will replace. However, it updates the controls in certain specific ways to make them clearer and more consistent, particularly on what types of land are covered by the regime and what types of works are exempt. For example, the present controls apply only to land subject to rights of common in 1926. As time goes on, that becomes more and more difficult to establish with any certainty. The Bill will create a clear link between works controls and land registered as common or, in some cases, exempted from such registration in the 1960s.

Finally, the Bill will ensure, as far as possible, that when the national authority's consent is required for works on commons, a uniform set of criteria will guide their determination. That is not the situation at present.

- 6 Commons Act 2006, section 38(2)-(4).

- 7 Commons Act 2006, section 38(5).
- 8 Commons Act, section 39(2)
- 9 The procedure to be followed when applying for consent for works on common land under the Commons Act 2006 is set out in SI 2007 no2588, Commons, England. The Works on Common Land, etc. (Procedure) (England) Regulations 2007, plus guidance from the Planning Inspectorate (Notes for making an application for consent to construct works on common land, http://www.planning-inspectorate.gov.uk/pins/common_land/guidance/index.htm) and policy guidance from Defra (Common land consents policy guidance, <http://archive.defra.gov.uk/rural/documents/protected/common-land/consent-policy-guide.pdf>). Applications are made to the Planning Inspectorate on a prescribed form. The applicant is required to advertise the application, and to notify a statutory list, which includes the landowner, commoners, those with a legal interest in the land, the local authorities, Natural England, English Heritage and the Open Spaces Society. The Planning Inspectorate urges the applicant to consult interested parties before submitting the application.
- 10 National Trust Act 1971, section 23(1).
- 11 National Trust Act 1971, section 23(2).
- 12 National Trust Act 1907, section 29(1)(A).
- 13 *Works on National Trust Commons, policy, instructions and guidance*. National Trust. 2007.

Bibliographical references and further reading

- Clayden, Paul., 2007. *Our common land*. 6th ed. Henley-on-Thames: The Open Spaces Society.
- Harris, B. & Ryan, G., 1967. *An outline of the law relating to common land and public access to the countryside*. London: Sweet & Maxwell.

4 The value of commons to communities

How and why do communities value their commons? In this section we give some pointers.

What can be measured

4.1 Our surviving commons come in all shapes and sizes. They range from the mountains of the Lake District and the moors of the north Pennines, North York Moors, Exmoor and Dartmoor, to the heaths of Cornwall, Suffolk, Surrey and Hampshire, the coast of Norfolk and the Chiltern woodlands. They vary in size from huge moorlands which are thousands of hectares, to tiny pockets of land often lost under bramble, scrub or concrete.

4.2 There are 7,052 commons in England that extend to 398,414 ha (three per cent of the land area). There is a distinction between those of the north and west, where commoning is still an important part of the rural economy, and those of the south and east where people with rights tend not to exercise them and commons are used purely for recreation. All are likely to be important for nature conservation.

4.3 Half of all registered common land units (3,608) are less than one ha in area, a total area of 1,072 ha.

4.4 Eighty-nine registered common land units are 1,000 ha or more in area—a total of 192,057 ha. Over half of England's common land is in Cumbria and North Yorkshire (31 per cent and 21 per cent, 116,500 and 76,900 ha respectively).

4.5 Public value can to some extent be measured by the area which falls within various statutory designations, and commons score hugely—over 88 per cent of English commons are designated for their wildlife, landscape or archaeological interest, and almost 100 per cent are available for public access by right.

Natural England has established that:

- 55 per cent of common land by area in England is designated as Sites of Special Scientific Interest (SSSI) (and 20 per cent of SSSIs are common land),
- 48 per cent by area fall within a National Park, ten per cent by number,
- 31 per cent by area (and 23 per cent by number) fall within an Area of Outstanding Natural Beauty (AONB),
- 38 per cent of open access land is common land,
- 11 per cent of scheduled ancient monuments are on common land.

What cannot be measured

4.6 Ask people why they value their local common and the same words keep coming up:

- timeless, history, culture,
- wild, untouched, untidy,
- variety, diversity, mixture, mosaic,
- belonging, familiar, involvement, welcoming,
- peace, tranquillity, stillness, freedom,
- uplifting, refreshing,
- simple, special, beauty, enjoyment.

Appendix Four includes some quotations from people about their local commons.

4.7 People may not know what a common is, but they have some sense of its survival through history, perhaps that the land once belonged to the people, and they want to keep it that way.

When Hampshire County Council was producing *Common Vision*,¹ a DVD to highlight the importance of commons to the public, the producer asked people at the street market in Hartley Wintney, a Hampshire town surrounded by common land, what they understood common land to be. The responses included the following:

...a wide open area, sometimes full of trees, where people can walk freely and in an unfettered manner because they have the legal right to do so,

... very nice to walk through—we're lucky to have all this common land round here,

... a nice piece of open land which is free for everybody to use,

... green space that many villages have that belongs to the community,

... trees, grass, lots of wildlife and bugs,

I don't know why it's called common,

I play football and muck about.

The many uses of common land

4.8 'We have come to the conclusion that, as the last reserve of uncommitted land in England and Wales, common land ought to be preserved in the public interest' (Royal Commission on Common Land, 1958).² It is just because commons are uncommitted that so many people are committed to them, for so many different reasons.

4.9 We have seen that they provide a sense of place and identity, they are loved for their landscape and freedom, and their quiriness; people go there to walk the dog, watch birds or pick blackberries, to sit around and chat, and to let children play. They are places for outdoor learning—about natural history and local history. There are the hidden benefits of health and wellbeing—one feels happier after a day on the common.

On Witley Common in Surrey the National Trust has a visitor and education centre, which houses a countryside exhibition and hosts school visits to this common which is a mixture of woodland and heath.

4.10 They are places where we celebrate traditions.

The Iron Age Poundbury Camp, on registered common land, is Dorchester's traditional fairground and market place, where election hustings also occurred.³

At Groveley Woods in Great Wishford, Wiltshire, on Oak Apple Day (29 May) before dawn villagers set out for Groveley Wood with banners bearing their motto 'unity is strength', and gather oak branches which must be no thicker than a man's forearm, green willow and hazel sticks. They are exercising their rights of estover, defined in a charter of 1603. Some of the wood brought back is used to decorate the village and judged as to its artistic merits, some is taken to Salisbury where, after a dance in the Close, villagers process through the cathedral, where they assert their rights by reading from their charter, and by a raucous shout of 'Groveley, Groveley and all Groveley'. Some boughs are taken to Great Wishford church and fixed to the clock tower to bring good fortune. This is followed by a procession displaying the leaves and branches, maypole dancing and a local fair.

4.11 On some commons there is a regular 'beating the bounds' with a procession round the common. The children are upturned and their heads are bumped on the boundary stones so that they remember where they are.

Local people beat the bounds of Downley Common in Buckinghamshire on Rogation Sunday each year.



Downley Common, Bucks. Photo: John Willson.

4.12 And they are places where we just have fun.

On Tylers Green Common in Buckinghamshire there are two fairs each year and an annual Fathers' Day fun run.

Notes

- 1 *Common Vision.*, 2008 [DVD] Hampshire: Hampshire County Council, Hampshire & Isle of Wight Wildlife Trust, Hart District Council, Natural England. Available from: <http://www3.hants.gov.uk/hampshire-countryside/countryside/commons-registration.htm> (click on 'commons video' tab). This was produced as an introduction to the public about the value of commons, focusing particularly on the heaths of southern England.
- 2 Royal Commission on Common Land 1955-1958 (Cmnd. 462) London: HMSO.
- 3 Legg, Rodney., 1995. *Dorset Commons and Greens*. Henley-on-Thames: The Open Spaces Society.

5 Principles of engaging with communities

This is to help you, as a manager of common land, understand how to go about involving the community in developing plans for the management of the common.

5.1 Everyone has an interest and a stake in commons. That's one feature that makes commons different from any other land type. In addition to the owner and common rightholders there is the public, with the right to walk (if not to ride) and, as we have seen, enjoying a myriad of activities there. And there are those who look out on the common but may not visit it, and those who live further away but who knew the common as a child.

5.2 All these people care about the common and are entitled to a say in what happens there. They must all be identified and listened to. If you fail to identify everyone near the outset, there is a risk that someone will later discover that something is afoot and be affronted, which can easily set back an emerging consensus.



*Southrepps Common, near Cromer in Norfolk.
Photo: Ian Witham.*

5.3 There may be national and international obligations relating to the habitats and species on the common, and your aim must be to meet these while accommodating the concerns and interests of the community. There will be different ways of doing this. We consider this further in section six.

5.4 It is important that you do not start with preconceived ideas. If people think you are just trying to win them round to your point of view they are likely to resist. Start with a blank sheet of paper and find out what people value about the common and what they would like to see happen there, and gradually build up ideas of how this might be achieved.

5.5 It is already evident that this cannot be hurried. It will take time to identify everyone and seek and understand their views, and to build trust and confidence. Do not rush it or take shortcuts—even if there is a deadline for a grant application. It's more important, for the long-term future of the common, and its community, to get it right.

5.6 The steps set out below are not necessarily sequential, you will find that as you engage with the community you continue to identify people who are a part of that community.

5.7 A process which has proved successful in determining the future of common land is set out in ‘A Common Purpose’ (Short, et al. (2005)). It is specifically aimed at providing mechanisms to assist with community engagement.

Ways of identifying the community

5.8 The aim is to get the contact details of all those who have an interest in the common.

5.9 The common’s community will vary according to its geography and location.

5.10 In a lowland village, the community may essentially be the people who live around the common.

5.11 In the mountains and moorlands of our National Parks and Areas of Outstanding Natural Beauty (AONBs) for instance, the community includes the nation and beyond—the many visitors who come for many reasons.

5.12 But you should not assume that it’s as simple as that, and you must allow plenty of time for finding out who has a stake in the common.

5.13 For the local community (or communities) you could start with the clerk to the parish council or chairman of the parish meeting; hang around in the local pub or shop (if they exist) to find out who’s who.

5.14 Many people will not be represented by any one body or group and so you will need to spend time on the common talking to those who use it and those who live round it.

- **Horse-riders:** find out if there are local riding or livery stables which use the common, and if the British Horse Society¹ or local pony-club represents people who ride there. But don’t assume that by consulting them you’ve consulted all horse-riders.²
- **Dog-walkers:** a difficult group to identify. You could set up a notice-board or display and encourage people to stop, talk about their dog and then how they use the common. There is a great deal of literature and advice on engaging with dog-owners.³

The Forestry Commission managers of the South Yorkshire Community Woodlands have set up ‘pit stops’, consisting of a ranger and van and a table with questionnaires and free dog-food samples, where people are encouraged to stop and have their say about the woodland.

- **Naturalists:** find out if anyone undertakes surveys on the commons, of birds, butterflies etc. Does the local wildlife trust have an involvement?
- **Local history:** find out if there is a local history group which is interested in the common.
- **The Open Spaces Society** may wish to be involved from the outset and may have a local representative. Contact its office⁴ to find out if and how it would like to be consulted.

5.15 It is impossible to prescribe who all the different interests might be; it's a question of spending time in the locality and talking to people.

5.16 Note that some people use the common in more than one way and so their interests in it may vary according to the activity they are pursuing at the time.

5.17 For National Parks and AONBs, talk to the National Park Authority and AONB officers to find out who visits the area and how it's used. There are likely to have been visitor surveys. Find out if there is a local pressure-group (for instance most National Parks and many AONBs have their own society) and see if you can use its newsletter to communicate with its membership.

5.18 Many people visit commons by car (even when they live nearby), so wait in the car parks to meet and talk to people. Use the notice-board to tell people what's happening and to advertise events.

Ashdown Forest in East Sussex is a regionally important area of common land, covering some 2,500 ha, with visitors from the surrounding counties. The conservators use the 50 car parks as a means of communicating with those visitors from further afield.

5.19 You'll need to allow plenty of time for doing this. Clearly, it will take longer if you are dealing with an area that is of more than local importance because you will need to communicate with that wider constituency. Always try to get people's contact details and find out if they wish to be on the consultation list.

Ways of engaging with the community

5.20 In identifying the community, you will have talked to people and therefore already engaged with them and built up a list. But now it's time to engage more purposefully.

5.21 This involves not only consulting and listening, but also establishing the best ways of undertaking this. The mechanisms will vary both with the nature of the common and, on any one common, with the various interest groups. Be

prepared to adopt a range of methods—surveys, questionnaires, leaflets, meetings, open days, drop-in sessions, social events, internet, websites, social-networking sites (eg Facebook, Twitter).

5.22 If your budget runs to an independent facilitator, this can help. People are generally more open when dealing with a neutral party.

5.23 A useful starting-point is to uncover the **history** of the common. This may involve some research, and certainly talking to the older residents, who may have memories or photographs of the common 50 years ago and will enjoy telling you about it. And it will promote dialogue with other members of the community who will be intrigued, or may want to argue that the common is a better place now (or not).



Gathering bracken on Chailey Common in East Sussex in 1936. Photo: Open Spaces Society collection, the Museum of English Rural Life, University of Reading.

5.24 Perhaps you could begin by having an **open day** in the village hall, where there are displays about the common and people are invited to bring memorabilia and to chat about the common through the ages. Encourage people to tell their stories, and make a record of them. Make sure you get details of everyone who attends, so that you can build a mailing list.

5.25 Throughout the process have regular **drop-in sessions**, where people can call by at the village hall or another informal location to give their views, or look at the ideas as they develop and ask questions. Informality is key.

5.26 In small groups, you can carry out a **SWOT** (strengths, weaknesses, opportunities, threats) analysis of the different options for the common.

The SWOT for the Pebblebed Heath Commons in East Devon⁵ included analysing the following under the four headings:

- Tree and scrub clearance
- Bracken control
- Surface scraping
- Turf stripping
- Controlled burning
- Mowing
- Grazing
- Herbicide use
- Stock management by shepherding
- Stock management by fencing
- Cattle-grids
- Combination managements
- Effects of public visiting

5.27 There should also be a ‘do-nothing’ option, although you may need to explain that doing nothing does not mean that the common will remain the same. It will mean a continuation of natural processes, eg scrubbing-over of heath, or increasing density of woodland with shading out of plants on the woodland floor.

5.28 This process will get people focusing on different management regimes and discussing the possible effect on their own view of, and activities on, the common.

5.29 The next stage is to break down the options into subheadings and identify the pros and cons of each.

5.30 People’s views may be coloured by their knowledge and memories.

Many residents of two villages in the Gloucestershire Cotswolds have lived around their commons for their whole lives. They remember the commons as they used to be: treeless and grazed by commoners’ stock. So they were pleased to see the reintroduction of cattle and sheep to graze the common. However, some members of another nearby community had moved in more recently. They did not remember their common when it was treeless, so they were concerned at plans to remove trees and graze the common.

5.31 Arrange **walks** on the common, with experts in different subjects, to enable people to talk about what they value and what they would like to see there. *Solvitur ambulando*.

5.32 If there is **practical work** to be done, involve local people (subject, of course, to the nature of the work and sorting out any insurance). They might help with bracken-bashing, pulling up rhododendra or uncovering an ancient monument for instance.

5.33 A big **public meeting** may be counterproductive, especially if a few vociferous people dominate it. Such meetings have been said to shatter the trust that has been built up by commons managers with the community over many years.

5.34 You could issue a regular **newsletter**, inviting contributions so that it is a discussion document (which can be supplemented, but not replaced by, a **forum on a local website** or on a **special website** set up for the purpose). If you provide a regular e-newsletter, make sure you also issue a paper version for those who prefer it.

5.35 It is important that people are not taken by surprise at any stage in the process, it's better to over-inform and over-consult than to risk being accused of hiding anything.

Assessing community significance

5.36 Throughout the process you need to be establishing what is valued by whom and why. You need to ask people, and not be judgemental. Often what is valued will be intangible—the feeling of peace or happiness, the apparent timelessness of the common—but such values are just as important as those which are measurable, such as species diversity or numbers of dormice.

Decision-time

5.37 You will eventually reach the point where you (or the decision-maker) must decide on what action to take, and seek whatever consents are necessary. Despite all your efforts, you may not achieve unanimity, but you should aim for something that everyone can live with. If there are some people who remain deeply unhappy, you should continue to try to talk to them and to involve them.

Afterwards

5.38 Once the plans are implemented, the community should be involved in reviewing and monitoring, carrying out surveys, doing practical work, and celebrating traditions such as beating the bounds. Also, if local people can enjoy the produce of the common it will help to reinforce the connection, eg bracken sold for composting, meat from the animals which have grazed there.

Friends groups

5.39 If there was a friends group at the outset, you will have used it for consultation and communication, although it is important first to test how representative it is of those whom it claims to represent. It may be that local people

set up a friends group in response to your involvement in the common, which you should welcome as it demonstrates an interest in the common and gives you a group with which to work.

5.40 However, if by the end of the process there is no friends group, you may wish to encourage the community to establish one, to monitor the common, carry out surveys, do practical work and generally keep an eye on things and communicate with people beyond the immediate locality.⁶

Checklist

- Work out the likely geographical and subject-matter spread of interests, and the organisations and individuals having an interest in the common.
- Work out how best to engage with each group and with the individuals.
- If possible, use an independent facilitator for the process.
- Research the history of the common.
- Consider encouraging the community to revive some old traditions.
- Organise an open day where people can bring information about the common.
- Organise walks, practical work, talks and social events.
- Organise informal drop-in sessions.
- Try using SWOT to identify the options for the future.
- Keep people informed by a regular newsletter and website.
- Adopt a policy of no surprises.
- Keep talking to people.
- Involve people in practical work and surveys.
- Encourage the establishment of a friends group.

Notes

- 1 The British Horse Society, <http://www.bhs.org.uk/>, Stoneleigh Deer Park, Kenilworth, Warwickshire CV8 2XZ, tel 0844 848 1666.
- 2 When preparing its scheme for Headley Heath Common in Surrey, the National Trust consulted the Headley Heath Riders' Association as the principal local organisation representing riders, and assumed it had then consulted the horse-riding interest. It agreed with the association the nature of the gates to be installed. After the fencing had been erected, the trust received complaints from other riders, who were not affiliated to the HHRA, about the gates, and it realised it had omitted to consult fully.
- 3 There is much literature about dogs which, although not specifically about commons, is applicable to them. The essence of it is that dog-owners should be treated positively and not as a problem. The best way to start a conversation is to say something nice about the dog!

The single most important access requirement for walkers with dogs is that the dogs can be off-lead. Where there is stock, they need to be given choices of where to go. The Forestry Commission has good advice at <http://www.forestry.gov.uk/forestry/infd-6yef8w>

Case study 7 is about dogs and conservation grazing in the Malvern Hills, <http://tinyurl.com/a5fcvvb>

Hampshire County Council has done some work on new approaches to managing dogs in the countryside, see <http://www3.hants.gov.uk/dogs> with links to various projects.

An overview is provided at Jenkinson, S., Hale, J., & Harrop, P., 2009. Influencing Walkers with Dogs: Three Years of Progress. *Countryside Recreation Network*, 17(2).

A consultant, who specialises in training and audits on managing dogs and their owners, is Stephen Jenkinson of Access and Countryside Management, tel 08456 439435, mobile 07973 721685, fax 01856 898078, email steve@sjacm.co.uk

- 4 The Open Spaces Society, <http://www.oss.org.uk>, 25a Bell Street, Henley-on-Thames, Oxon RG9 2BA, tel 01491 573535.
- 5 Underhill-Day, J.C., 2009. *The Pebblebed Heaths, an options appraisal*, unpublished short report to The Pebblebed Heaths Conservation Trust. Wareham: Footprint Ecology.
- 6 The National Trust values friends groups as ‘critical friends’. On the Surrey commons, the Headley Heath Friends Group was helpful when the trust was consulting about the future of Headley Heath common. The trust has set up a friends group at Outwood Common, south of Bletchingley, and its members do practical work on the common.

Bibliographical references and further reading

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Sidaway, Roger., 2005. *Resolving environmental disputes*. London: Earthscan.
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6 Reconciling national and local interests

National and local interests should be recognised, valued and integrated, without asserting that one should prevail upon the other. This section gives some suggestions on how to achieve this.

6.1 As explained in section four, some 55 per cent of common land is designated a Site of Special Scientific Interest (SSSI), each with its own set of conservation objectives, and 20 per cent of all SSSIs include land registered as common land.

6.2 The Commons Act 1876, Law of Property Act 1925 and Commons Act 2006 give pointers to how the benefit of the neighbourhood and interests of the neighbourhood will be considered by the secretary of state. However there are no recognised criteria to assist in determining or discovering the nature of local interests and those of the local community.

6.3 Your aim must be to integrate the international and national designations with the local interests, so people do not feel they are being bulldozed by directives which are decided many miles away. You must provide easy-to-understand explanations about the various statutory requirements but also explain that no particular solution is inevitable. You must not use the statutory designation of the land as the reason to pursue a particular course of action: it is just one of many considerations. But if there are matters which cannot be negotiated, you need to explain that from the start, giving good reasons why.

6.4 The Corporation of London consulted about both a management plan and proposals for works for Burnham Beeches, Farnham Common and Stoke Common. The exercise provided a useful insight into upholding the statutory designations and determining and assessing the local interest.

Burnham Beeches and Stoke Common

6.5 Burnham Beeches in south Buckinghamshire was acquired by the City of London in 1880, in response to a threatened purchase by residential developers. The 220 ha contain a mixture of ancient woodland, wood pasture, coppice, ponds and streams, grassland mire, heathland and common land. The area attracts over 500,000 visitors a year and is managed both for conservation and as recreation amenity. There are three scheduled ancient monuments and the site is designated as National Nature Reserve, SSSI and Special Area of Conservation.

6.6 On 31 October 2007, ownership of nearby Stoke Common, designated as an SSSI, was transferred to the City of London. Stoke Common contains the largest remnant of Buckinghamshire's once-extensive heathland. With its poor acidic soils it plays an important role in providing habitats for rare species.

The land management, including grazing, keeps the vegetation open, helps to protect the heathland and upholds the statutory designations.

6.7 The Burnham Beeches consultation group meets three times a year. Its membership consists of local people, representatives of closely associated organisations and local authorities, organisations with a statutory involvement in the management of the site, and officers and members of the City of London. The aim of the group is to implement the site-management plan for the benefit of visitors, wildlife and the environment. Site users are also consulted on specific issues as they arise.

6.8 Following discussions with Natural England to establish priorities (given the land's designation as an SSSI) the City of London consulted the public on the preparation of a management plan for Burnham Beeches. It provided detailed information about the city's legal duties to comply with the conservation requirements in section 28G of the Wildlife and Countryside Act 1981 and the Natural Environment and Rural Communities Act 2006. This included explaining that the city was required to take reasonable steps to further the conservation and enhancement of its open spaces. Development of the plan was a collaborative process between the city, conservation experts and the local community. Extensive consultation was carried out at various stages of the plan including with members of the public and regular visitors.

6.9 To broaden the consultation, the city held an event day, with lots of images and photographs to make the issues more intelligible to the public. It invited local user-groups, and advertised the event on the site and in local newsletters and newspapers.

6.10 It used various methods to gather views: posters with explanations and questions and pie-charts with stickers. The display at the event was carefully designed to cover all the information and to avoid confrontation with managers. Questions included 'do you believe restoration of heathland is a worthwhile aim?' Pictures and information were provided before posing questions.

6.11 There was an explanation about grazing, why it was needed, the legal reasons, and the benefits for local people, with questions such as 'do you feel the long-term benefits of conservation grazing outweigh the challenge?'

6.12 Following the consultation, a ten-year management plan was finalised to restore heathland at Stoke Common, in addition to the plan for Burnham Beeches. A local farmer is employed to graze Stoke Common for conservation.¹



*Burnham Beeches consultation.
Photo: City of London Corporation.*

6.13 The lessons learnt from the consultations at Burnham Beeches and Stoke Common were:

- you need to be up-front about what is being consulted on and what is not,
- be clear about what is negotiable and what is not,
- if there is a negative response, provide a better explanation, in newsletters and on a website,
- spend time with different groups of users,
- publication of results of consultation should include things that cannot be done and why,
- it is necessary to accept that it is not always possible to win everyone round,
- a useful tool is to set up a consultation group, to include neighbouring landowners, parish/town councils, running groups, cyclists, horse-riders and ramblers, with nominated representatives for each group.

Checklist for reconciling national and local interests

6.14 A consistent and accessible approach to consultation is beneficial to all those involved. This may mean extra time and effort will be needed when works are to be carried out on commons. The aim is to provide a greater understanding among local people of what is being done.

- Consider what mechanism is most appropriate for the various groups being consulted: public meetings, letters, presentations, exhibitions, newsletters, site walks, meetings with individuals, electronic communication.
- Be clear in relation to each part of the consultation as to its purpose and scope, particularly whether it is consultation or communication, and what is negotiable and what is not.
- Ensure that people do not expect the impossible, and that the process is kept to a realistic timetable.
- The process needs to be thought out, but it does not have to become bureaucratic.
- Whatever mechanism is used it is important that it is seen as being open and straightforward, and that people are kept appropriately informed once they have been consulted.

6.15 There is growing recognition of the value of commons for wildlife and as part of the historic landscape and this can mean that works to protect and manage the land can be explained to people more easily.

Notes

- 1 The management plans for Burnham Beeches and Stoke Common, and further information about the consultation process, can be found at <http://www.cityoflondon.gov.uk/burnham>.

7 Fences—last resort

In determining how to manage a common, you should view fences as a last resort. This section explains why, but also gives some suggestions of how you can mitigate the effect of inevitable fencing.

7.1 People value the open, untrammelled, informal and free nature of commons. Fencing is one of the most controversial issues. There are many reasons for this, some or all of which may be applicable in any one case.

- The history of commons is scarred by the inclosure movement (see section two). Fences are modern-day enclosures.
- Fences symbolise the struggle between the oppressed local people and powerful outside interests.
- They are the first stage in divorcing the commons from their communities.
- They are a physical barrier, preventing people from wandering at will, contrary to their customs and now rights.
- They are a psychological barrier, constraining people's feelings and losing the sense of openness.
- They impinge on the landscape.

7.2 Many of these views have been expressed in ministerial and Planning Inspectorate decisions quoted in Appendix Two.

7.3 We therefore recommend that fencing should be viewed as a last resort.

7.4 When consulted about proposals for commons which involve fencing, the Open Spaces Society requests evidence that all other options have been considered. Its policy is to object to fencing unless there is an overriding need which cannot be met by alternative means.

7.5 Fencing may be proposed to keep stock in or out, or it may be to keep out deer and rabbits.

Approval was given by the Planning Inspectorate:

- on Arkengarthdale Common in County Durham in March 2009 for five-year fencing to allow the regeneration of heather by keeping off stock;¹
- on Hartley Fell Common in Cumbria in March 2010 for 15-year fencing to protect young trees from stock and allow the creation of native gill-woodland.²

7.6 It is as difficult to resolve how to graze small, fragmented commons, such as the Cornish and Norfolk heaths, as the big open moorlands and heathlands. The open nature of those small patches of remnant heath and grass is a major part of their value and character.

7.7 The dilemma is that grazing is likely to be the best way of managing the vegetation of commons in the interests of biodiversity and public access, and it is difficult to have grazing without some kind of barrier.

Greater understanding: the benefit of pilot plots



Hazeley Heath Common in Hampshire, June 2007 before the pilot plots were installed.

7.8 People's opinions are also likely to be influenced by whether they understand the purpose of the fencing; if the desire for conservation-grazing is explained and shown to be necessary, they might not mind the fencing so much. But it is unreasonable to expect people to take the scientists' word for it—if fencing is considered to be necessary, it's better to test the effect of grazing with pilot plots and temporary enclosures and so let people

see for themselves the effect on the landscape, vegetation and public access.

At Hazeley Heath Common, Hartley Wintney in Hampshire, the county council obtained consent in 2009 to erect a temporary (five-year) electric fence enclosing about 15 ha. After having difficulties in getting agreement to a management plan for the common, the council introduced the idea of the pilot proposal which met little opposition; the Planning Inspectorate granted consent after receiving written representations. The fence is removed when the stock is taken off the common, and the experiment is properly controlled. The aim is to determine whether grazing by domestic livestock is an appropriate management tool for protection against encroaching scrub: a condition for the Hazeley Heath Site of Special Scientific Interest (SSSI) is to maintain the heathland.

At Westernhope Common, near Stanhope in County Durham, three trial-plots were temporarily fenced off in 2004 to test the effect of removing stock on a re-seeding programme to allow regeneration of heather. One plot was fenced to exclude stock and had no further treatment, one was fenced and treated to remove invasive species, and a third was treated and re-seeded with heather. The results showed that the most successful regeneration of heather took place with a combination of early treatment and re-seeding. In 2009 the owner obtained consent from the Planning Inspectorate to extend the programme to a larger area of moor.³

7.9 Temporary fencing is likely to be more acceptable. Applications should be for a limited period followed by a review with a clear commitment to remove the fence, or change course, if the evidence and public opinion support this.

Stock

7.10 People's views about fencing may well be coloured by their views about the animals which will appear on the common if it is fenced. For example dog-walkers may be opposed to cattle.

7.11 Selection of the right breed of stock is important. Temperament of the animals is a key issue, especially on sites used by dog-walkers. The look of the animals is also important, some of the most docile cattle can put people off simply through their appearance. It is best to try to keep the same core group of animals on the site because they get to know it, and adopt regular patterns of movement through the day. This means that they can be more easily found and local people know where they are, so as to avoid or visit them depending on their wishes.

7.12 Animals may be an additional attraction to those who use the common.

Blackdown Common in West Sussex was fenced in 2007 and grazing was re-introduced there by the National Trust after nearly 80 years. The trust puts posters up in the locality to herald the return of the Belted Galloway cattle.⁴

The National Trust, in its application for fencing on Headley Heath in Surrey, said:

‘One unexpected benefit of grazing has been the interest shown by the public in the animals themselves—it is our experience that many people visit hoping to see the animals, and count it as part of the pleasure of their walk when they do so.

‘However it also has to be recognised that this may not be so for all people—some actively avoid them. In an entirely open heath (without internal paddocks) they may not be avoided altogether and some changes to the type of stock will therefore be made. We will change from Highland Cattle, which are very big beasts with long horns, to Belted Galloways, a much smaller, equally docile breed without horns. Our experience with Belted Galloways at Box Hill and Reigate has been that they are hardy and will therefore do the grazing required, but they are perfectly at ease with visitors and pay them little heed—they are however equally attractive and photogenic and attract their own coterie of human admirers.’⁵

Ways of mitigating the effect of fencing

7.13 To many people the prospect of any fencing on the common is anathema. That is a perfectly tenable position, given that commons have remained unenclosed through history. However, managers can mitigate the effects of the fencing.

Part-year removal

7.14 Fencing which is only needed for part of the year should be removed when it is not needed.

On Longmoor Common in Ennerdale, Cumbria, the National Trust was granted consent in 2008 for an 80-m long section of 1.2-m high stockproof cattle fencing for 15 years. The principal aim is to re-establish a suitable habitat for the marsh fritillary butterfly. The implementation was delayed by the need for consent for cattle-grids, but the fence is only to be in place for part of the year (mid-spring to end of autumn), its purpose being to make the common stockproof and the management of the area more effective with part-year grazing instead of mechanical cutting. The trust will remove the wire from the fencing when grazing animals are not on site, and the majority of fence posts will also be removed (some will be concreted in). Fencing will be temporary but the post-holders are to be left in the ground ready for the fencing to be installed.⁶

Location

7.15 Fencing which subdivides the common into paddocks is particularly bad, as one cannot easily escape from its effect. It is preferable for the fence to be on the perimeter so that once people have entered the common they can forget the fencing and experience a relatively open landscape. But that too can lead to problems. Where there are slivers of common on the other side of a road or track, or separated from the rest of the common by some other feature, it may not make practical sense to keep the fence to the boundary of the registered unit. However, if pieces of common are left outside the fence, they are at risk of being neglected and forgotten, and encroached upon by neighbouring landowners and filched as private land (it does happen).

In 2009 Worcestershire County Council was granted permission to erect fencing around Hartlebury Common, an SSSI near Stourport, following a public inquiry. Although the fencing was essentially around the perimeter, there were 12 isolated parcels of common land, some of which were subject to unlawful encroachments. The application was opposed by the Open Spaces Society, partly because it considered that these isolated areas could become neglected and disenfranchised from the common. The inspector disagreed.⁷

Landscaping

7.16 As fencing is unnatural, it is best to ensure it is hidden in vegetation. That can provide a dilemma, because it may mean setting it back from a road, leaving a strip of common outside the fence. Ideally that strip should be maintained as highway verge, for walkers and riders to use. It is certainly better to bury a fence in gorse and birch. Indeed, it is better still to use the traditional enclosure material of blackthorn hedges, where they grow naturally.

7.17 Fencing which is visible on the skyline is likely to be unacceptable.

Type of fencing

7.18 The type of fencing to be chosen will vary according to its location and the landscape, and its purpose. Post-and-rail fencing is more easily negotiated by walkers but has a more formal appearance; wire sheep-netting may be more easily hidden. Walkers have the right to walk on every part of the common; the fence should therefore be of a type which they can conveniently cross anywhere. The nature of the fence posts is also important: wooden posts weather and blend-in, metal ones have a banal appearance

Barbed wire

7.19 Barbed wire should be avoided, it prevents walkers from crossing the fence at any point, and people can tear their clothes, or they or their dog may be injured. Belted Galloways and some other species of cattle may be contained without barbed wire.

The National Trust amended its plans for fencing of Headley Heath Common in Surrey, after consulting the public, by removing the barbed wire and applying for fencing with four strands of plain wire. In its application for consent, it noted: ‘There was a strong feeling expressed by the public that barbed wire would be both dangerous and visually intrusive.’⁵

Electric fences

7.20 Electric fencing is used for temporary enclosures which are only needed for part of the year. It is useful when piloting a scheme, to test the effect grazing will have on the public and the vegetation before deciding whether to extend it to the whole common.

7.21 Depending on the area to be enclosed and the length of time, the fence may not need consent under section 38 of the Commons Act 2006 but may instead qualify as an exemption (see paragraphs 3.29-31).

7.22 It is relatively low cost, however it does require maintenance. It is important to keep bracken and other vegetation away from it as it can cause a short circuit which renders the fence useless. Repairs can be time consuming, particularly when trying to find a break in the circuit, and it is susceptible to damage by winter storms, vandalism and tampering. Unless there is a convenient mains-supply nearby, you must change the battery regularly.

7.23 The fence can be made of wire, tape, net or a combination of these. The choice will depend on the size of the area to be fenced and the climatic conditions (lightweight fencing in exposed situations may suffer from wind). The posts may be plastic ‘tread-ins’, metal with an insulating section at the top, or wooden. If the area to be fenced has a wooded fringe, you can screw small insulators into the trees.

7.24 Some animals are better contained by electric fencing than others. For instance, ponies are respectful of a fence and once they've had a shock they won't go near it again. Hardy, native breeds such as Exmoor and New Forest are best. Cattle too are respectful once they've had a shock. The number of strands of fencing also depends on the animals. A single strand just over a metre from the ground may be sufficient for cattle and ponies, sheep require more strands and with their thick fleece they may be able to get under the fence, feral goats may require up to nine strands!⁸

7.25 Electric fences can be hidden in the landscape, or brightly coloured. Some people prefer the brightly coloured fence so that they don't walk into it accidentally.



On Aylesbeare and Harpford Commons on the Pebblebed Heaths SSSI, in the East Devon Area of Outstanding Natural Beauty, the RSPB is grazing Devon Red cattle using electric fencing supported by birch posts. These are less visible than ordinary wood, with the appearance of natural saplings, and disappear into the surrounding heathland landscape.

Access and access points

7.26 As people have the right to walk over the whole common, and may also have a right to ride, plentiful access-points are crucial. On public rights of way they must by law be provided (with consent, see below), but they should also be provided wherever a permissive route or desire line crosses a fence. It should always be possible when approaching the fence to see an access point so that walkers and riders know which way to go to cross it. This may mean a higher post, perhaps painted white, beside the access point, though the effect on the landscape must also be considered.



How not to do it: eyesore on Crownhill Down, south-west Dartmoor.

7.27 Gates should be in keeping with the landscape, for instance, wooden gates may not last so long but they are more rustic than metal ones. Metal kissing-gates have a particularly suburban appearance.

7.28 Any access points should be gates, and not stiles which are difficult for many people to negotiate. They should be to British Standard 5709.⁹ If they are to be erected across a public right of way, the consent of the highway authority (county or unitary council) must be obtained under section 147 of the Highways Act 1980. The effect of this section is to allow an obstruction on the highway, but only if the land is in use, or being brought into use, for agriculture (which includes grazing). The gate or stile should be removed if the land use changes from agriculture.

Horse-gates

7.29 On commons where there are rights for horse-riders (whether over the whole area or on bridleways), or riders have traditionally enjoyed access, the gates must be suitable. Not only must they be to British Standard 5709, but they must not be self-closing, as this can cause accidents. The time normally allowed for such gates to close is four to six seconds, which is inadequate. The speed and efficiency with which a horse and rider can get through a gate varies with the size of horse and the amount of training it has had. Many riders cannot mount their horse without a mounting block and/or assistance. In any case, leading a horse through a self-closing gate is not practical either, as the rider has to let go of the gate when he is part way through, causing the gate to slam on the horse's side. There also needs to be turning and manoeuvring space around the gate. The British Horse Society can provide details and advice.¹⁰

Checklist

- Establish whether fencing is essential and that no other option is feasible. (See section eight for alternatives to fencing.)
- Consider whether it is possible to pilot the approach.
- Consider use of temporary fencing followed by a review.
- Consider type of stock, not only for the vegetation but also for the public, taking account of the public's use of the land.
- Consider what mitigation is possible:
 - Part-year fencing which can be removed when not needed.
 - Location of fencing, perimeter preferable to internal, but take care not to leave areas of common outside the fence.
 - Consider landscaping of fencing, hiding it in vegetation.
 - Consider type of fencing, minimise use of barbed wire.
 - Consider whether from public point of view it is better to have electric fencing.
- Ensure plentiful, well-marked access points, suitable for walkers and riders of all abilities.

Notes

- 1 Decision letter by Naoual Margoum, Planning Inspectorate, COM60, 18 March 2009. Available from: <http://www.planningportal.gov.uk/planning/countryside/commonland/decisions>
- 2 Decision letter by Gina Warman, Planning Inspectorate, COM144, 31 March 2010. Available from website in note 1.
- 3 Decision letter by Gina Warman, Planning Inspectorate, COM115, 11 December 2009. Available from website in note 1.
- 4 Publicity about the return of cattle to Blackdown Common and neighbouring commons is at <http://www.haslemere.com/localnationaltrust/>
- 5 National Trust's application for Headley Heath, Surrey (17 July 2007).
- 6 Decision letter by Gina Warman, Planning Inspectorate, CLI 379, 16 May 2008
- 7 Decision letter by Martin Elliott, Planning Inspectorate, COM54, 17 September 2009 para 50. Available from Available from website in note 1.
- 8 Turley, Marcus., Electric fencing—everything you never really wanted to know. (Personal communication, telephone, 4 March 2010)
- 9 British Standards Institution, 2006. BS5709:2006 *British Standard for Gaps, Gates and Stiles*. BS 5709:2006. Milton Keynes:BSI
- 10 British Horse Society., 2010. *Gates and conservation grazing*. Rights of Way Review Committee paper (10)03; Trial of self-closing bridle gates (2011) www.bhs.org.uk/~media/BHS/Files/PDF_Documents/Access_leaflets/BHS_Self_Closing_Gates_Report_2011. Further advice from The British Horse Society, <http://www.bhs.org.uk/>, Stoneleigh Deer Park, Kenilworth, Warwickshire CV8 2XZ, tel 0844 848 1666.

8 Alternatives to fencing

Since fencing should be a last resort, it is important to explore the alternatives. This section looks at some good practice.

8.1 We have seen that the unenclosed nature of commons is treasured by people. Consequently, managers should do their utmost to find ways of managing the land without fencing. This section investigates the alternatives. These involve regulating stock or regulating traffic—or both. Some measures, such as speed limits or gateways, have the additional benefit of reinforcing the special nature of commons in the public’s mind.

8.2 The principal conflicts are between grazing animals and traffic, and between grazing animals and adjoining private properties. For the latter, the practice is that owners of those properties should fence against the common. However, as a gesture of goodwill and/or to ensure the job is done properly the common-land manager may wish to carry out such fencing. But if the adjoining property is similar in nature to the common, it might be better to try to manage that property as part of the common, to avoid creating physical boundaries.

At Marley Common in West Sussex the two landowners, the National Trust and the Lynchmere Society, work together to manage the common as one unit. There is no evidence on the ground of the boundary between the two landownerships and, rather than erect fencing around each of their properties, they made a joint application for fencing more or less around the perimeter.¹

Checklist of measures to avoid fencing²

8.3 These can be used individually or, more likely, in combination.

Stock

- choose light-coloured stock
- location of food, shelter, shade, water
- hefting
- reflective collars and leg bands
- invisible fencing
- shepherding

Roads

- manage the vegetation, keep roadsides clear
- cattle-grids
- traffic-calming
 - speed limits
 - engineering, such as:
 - gateways

- access restrictions (gated roads, directing drivers away from calmed areas, traffic regulation orders)
- prominent signs
- road markings
- surface treatment
- road narrowing (chicanes, islands, footway extensions)
- road humps
- changed priorities
- remove engineering features to slow traffic

Stock

Light-coloured stock

8.4 These are more easily visible, especially in the dark and fog, and therefore less likely to be hit by vehicles.

West Berkshire Council uses British White cattle on Greenham Common which is crossed by an unfenced road.

Location of food, shelter, shade and water

8.5 If food, shelter, shade and water are sited carefully, it may be that, in their daily routines, stock will not need to cross roads. In winter, animals tend to congregate on the roads, to lick the salt and to lie on the warmer surface, so you need to think of ways to discourage them. Alternatively, on the Malvern Hills commons the conservators put molasses in the salt grit so that the animals stand in the road to lick it, forcing the traffic to slow down.

Hefting

8.6 Hefting (different words are used in different parts of the country) means that animals know their home range well. In the uplands this is ingrained in many herds but new stock require a stockman to train them to stay in their territory.

Reflective collars and leg bands

8.7 These are normally used in conjunction with speed limits and greatly improve the visibility of animals. There is anecdotal evidence that the collars reduce the number of animal-related accidents with vehicles.

On the Gower commons in south Wales, there are unfenced roads across Fairwood Common, Pengwern Common and Cefn Bryn, resulting in accidents. The commoners place collars on the darkest-coloured cattle and the leaders of the herd.

Invisible fencing

8.8 Animals are fitted with collars, and if they cross a buried wire, ignoring visual and audible warnings, they receive an electric shock. They quickly learn

where the boundaries are. However, it is only appropriate for short stretches of boundary.

A successful trial was undertaken in 2006 on Cranham Common in Gloucestershire with cattle. In addition, cattle-grids were painted on the road to discourage animals from crossing it, since it is believed that they dislike black and white stripes on the road.³

Shepherds

8.9 The benefit of shepherding is that it may reduce the need for fencing, it provides employment for people, and retains or recreates the old link between people, their animals and the land. However, it can be very expensive with the cost of employment, vehicles, vets' bills and the acquisition and fencing of in-bye land, and it may only be possible if agri-environment funding is available.



The Conservators of Ashdown Forest in East Sussex have, since 2007, employed a shepherdess, Louise Amos, who spends each day with her free-ranging flock of black Hebridean sheep. There are about 1,500 ha of heathland, much of which (outside the fenced block) needs grazing. The flock of 300 sheep cannot make much impact on the whole area, but they can graze pockets of heathland and make a difference. The project is funded by Higher Level Stewardship. The conservators have shown that it is possible to build up and run a small flock, with a shepherd and part-time assistant, and that this may avoid the need for fencing of the small, relatively isolated areas of heathland where this grazing occurs.⁴ Photo: Ashdown Forest Conservators.

The National Trust employs Lisa Hawthornthwaite and her highland pony Ossie to look after the herd of Red Devon cattle on Studland Heath (not common land) in Dorset.

In Epping Forest, the City of London employs a herdsman, Oe Jamieson, to manage more than 50 longhorn cattle. The City has partially fenced one busy road that crosses the site, but this does not enclose the common. The cattle are corralled at night, and have developed a daily and seasonal routine. Much of the grazing is done with temporary electric fencing which the herdsman manages, and she also ensures that animals do not stray onto the adjoining, unfenced, golf courses. The employment of the herdsman means that there is less need for fencing.

Roads

Managing vegetation alongside roads

8.10 Clearance of roadside vegetation enables animals to be more easily seen, but it also encourages people to drive faster because there is better visibility, so you need to strike the right balance.

The Gower Commons Initiative⁵ mows strips on either side of approximately 24 km of unfenced roads across the commons. The commoners alternate mowing a strip adjacent to the road one year, with a strip further away from the road the following year, to achieve a balance between visibility for drivers and keeping the stock away from the road.

At Greenham Common in West Berkshire, the roadside verges are cleared so animals can be seen.

Cattle-grids

8.11 Where there is no fencing, it is necessary to have cattle-grids to stop animals from wandering into people's properties or onto the fenced roads beyond the common. Cattle-grids on a public highway need the consent of the highway authority (county, unitary or metropolitan borough council) under section 82(4) and schedule 10 of the Highways Act 1980.

8.12 The highway authority must be satisfied that it is 'expedient ... for controlling the passage of animals along the highway'.



Hanworth Common near Cromer in Norfolk, Photo: Ian Witham.

8.13 It is usually necessary to have a small length of fencing alongside the cattle-grid, and any consent under section 82 will include consent for 'other

works as may be necessary for the proper control of traffic and the effective operation of the cattle-grid' which may include any short stretches of fencing that form an integral part of the cattle-grid works. This means that you do not need to make a separate application under section 38 of the Commons Act 2006 for such fencing.

8.14 Cattle-grids may also be necessary where the common is fenced.

8.15 There are many stipulations and restrictions about the use of cattle-grids (such as the need to be a certain distance from properties, schools and road junctions), which makes them difficult to use in built-up areas.

8.16 Cattle-grids may not be popular with nearby residents because of the noise when vehicles cross them.

On the Malvern Hills commons the conservators have received Heritage Lottery money for cattle-grids on Chase End, Midsummer Hill and British Camp, enabling them to graze the southern hills without fencing. On the middle and northern hills where there are more buildings, cars and people, they use electric fencing with gates, rotating the fencing every two months.⁶

Speed limits

8.17 The Highway Code⁷ exhorts drivers to pass animals slowly, but unfortunately this is consistently ignored. One way of avoiding having to fence grazed commons is by having an enforced speed limit on roads across them.

8.18 While speed limits may be highly desirable, they are not easy to achieve. They are likely to be expensive (they need to be introduced in conjunction with traffic-calming measures). They may be unpopular with motorists, many of whom may have no connection with the common but use the route regularly, perhaps to commute, and are used to travelling fast along it. People may not readily understand the need to slow down on this stretch of road, The introduction and enforcement of speed limits involve many parties—including the traffic authority, the highway authority, the police and highway engineers. Such proposals are likely to be subject to local politics.

8.19 If you plan to pursue this, it is important to get the decision-makers on board, ie the highway authority, which means involving the members, especially the ward member and portfolio holder. It is important to research the facts and arguments in favour of a speed limit, and to build up a lobby of support for the plan.

8.20 Once speed limits have been introduced, they must be enforced, with prosecutions and publicity, to deter people from flouting them.

8.21 North York Moors National Park: the authority has wrestled with the problem of sheep deaths on unfenced moorland roads for many years and has explored many options. Some of the major roads were fenced in the past. There are a few roads which are unfenced and give regular problems, in particular the road from Hutton-le-Hole to Castleton. The park has monitored the situation since about 2000. In 2008 farmers reported that 240 sheep and lambs were killed on unfenced moorland roads, with anecdotal evidence suggesting the main culprits were local people and commuters, rather than tourists.



8.22 In 2006, National Park staff met the farmers, highways agency and police to discuss a solution. They decided to install six solar-powered vehicle-activated signs. When a motorist is travelling at about 40-50 mph the sign lights up with a sheep in a warning triangle, followed by the words 'slow down'.

8.23 **Dartmoor National Park:** a 40 mph speed limit was introduced on about 144 km of unfenced moorland roads in two phases from 1995. It is supported by road signs, roundels painted on the roads and boundary gates to reinforce the impression of entering somewhere special.

Photo: North York Moors National Park Authority.

8.24 The speed limits have had some beneficial effect in reducing accidents involving animals, the rate for accidents involving injury reducing by 53 per cent and for damage-only accidents by 68 per cent in the west Dartmoor zone.⁸ There was a reduction in the average speed of motorists (from 50.3 mph to 42.4 mph) and also reductions in stock losses (about 27 per cent, from 105 to 77, according to sample information from graziers). However, speeds started to increase as time went by and animal losses were still giving cause for concern. An initiative, led by the Dartmoor National Park Authority with support from the Dartmoor Livestock Protection Society (DLPS) and Devon County Council, sought to:

- collect information on the speeds of vehicles passing through known accident areas, using speed-activated road signing (speed visors),
- raise awareness of the 40 mph speed limit using the signs and enhanced signing at key locations, with a view to reducing speeds on moorland roads at least back to the levels achieved following the initial introduction of the 40 mph zones,
- press for police enforcement of the 40 mph limit if needed.

8.25 The DLPS purchased three speed-visors and the authority installed them and provided additional signing, attached to the visor installations and at the entrance to a stretch of moorland where speeds are highest and the animal accident problem greatest.

8.26 The process was well received by the commoners and DLPS and widely reported in the press. It was good for public relations and as a demonstration of partnership working, and removed the pressure for further fencing of moorland roads.

8.27 Speeds have remained too high, but there is anecdotal evidence that raising awareness has led to a reduction in animal accidents in some locations. The data have been used by the police to do some low-key enforcement.

8.28 **New Forest National Park:** the major roads across the New Forest (A31 and A35) are fenced. In 1990 a 40 mph speed limit was introduced on all the minor roads in a bid to cut animal deaths. The number of accidents dropped initially but rose again as drivers became complacent. Other speed-reducing methods were tested, such as speed ramps and giving priority to traffic coming from a particular direction on narrower sections of road, but none had an outstanding effect.

8.29 **Greenham Common, West Berkshire:** it is grazed by cattle and Bury Bank Road is unfenced, so cattle are able to roam at will and frequently cross the road or congregate beside it. A few animals have been lost in collisions, but fewer than might be expected because: there is a 30 mph speed limit with flashing signs; clearly-marked cattle-grids, occasional speed-enforcement, cleared roadside verges and light-coloured animals.

8.30 **Minchinhampton and Rodborough Commons, Cotswold Area of Outstanding Natural Beauty, Gloucestershire:** In 1999 Gloucestershire County Council's traffic regulation order subcommittee approved a speed limit of 40 mph across Minchinhampton and Rodborough Commons, which are Sites of Special Scientific Interest (unimproved, herb-rich, limestone grassland) owned by the National Trust. A number of measures were implemented in 1996 in an attempt to reduce accidents, particularly concerning cattle. These included additional signing and rumble-strips laid in conjunction with road markings depicting cattle. They had only a limited effect in reducing speeds, and animal accidents increased the following year.

8.31 The committee had to justify making an exception to its speed-limit criteria. The justification was the level of accidents, the adverse effect that withdrawal of grazing animals would have on the ecology, the use of the area for recreation and the perception of local communities. The commons are unusual in that there are six unfenced roads meeting at one junction in the centre of the

common and traffic usage is high; there are many animals and many people using the common throughout the year.

8.32 Ashdown Forest, East Sussex: In 1997 East Sussex County Council introduced a 40 mph speed limit on all A, B and C roads across Ashdown Forest, excluding the A22. Although initially this had an effect on speeds, in time it wore off.

8.33 In 2006, East Sussex County Council, part of the Ashdown Forest Villages Road-Safety Partnership with Sussex Police, East Sussex Fire and Rescue Services, the conservators and parish councils, launched a campaign to encourage drivers to reduce their speeds: the Slow Down—Give Space campaign. This is repeated regularly. Drivers were encouraged to sign up to the county council's 'Kill Your Speed Commitment Campaign' and were given free tax-disc holders and rear-window stickers sporting the logo.

8.34 As part of the campaign, local volunteers used speed-indicator devices to warn drivers to slow down. However, their function is to educate, not to enforce. It is more effective for the police to do spot checks and for volunteers to be trained to use speed guns, data from which enable the police to take enforcement action.

Engineering

8.35 There is a range of measures to reduce traffic speeds, which can be used with speed limits, such as gateways where roads enter the commons, to make people realise that they are coming into a special place. These can then be supported by chicanes, rumble-strips and road-narrowing.

On Ashdown Forest, East Sussex County Council has erected short lengths of locally-traditional chestnut post-and-rail fence at the entrance to the forest, so people know they are entering a special place. The conservators cut back the trees from the roadside at the forest entrances, to reinforce the feeling that one is leaving a woodland and deeply-hedged landscape and entering open heathland common.

8.36 The cost of mitigation measures may be high, but should be viewed in the light of the costs of human fatality.⁹

Notes

- 1** The decision on the fencing application can be found on the Planning Inspectorate website at <http://tinyurl.com/axn9c8l>. (COM61 and COM62, 2 June 2009).
- 2** Grazing Animals Project, 2007. Information leaflet 7, *Reducing stock casualties on sites with vehicular access*. (GAP information leaflet 7) [internet] Cambridge.

Available at:

http://www.grazinganimalsproject.org/animal_welfare.html#pub_95

The Grazing Animals Project website contains much useful information.

- 3 Personal communication (telephone, 26 March 2010). Mark Crowther, chairman, Cranham Common Management Committee.
- 4 Further information is on the Ashdown Forest website <http://www.ashdownforest.org/index.php>. Ashdown Forest is an extensive (2,500 ha) area of common land. One block of 550 ha, between two busy roads, is fenced and for much of the year contains several hundred sheep and up to 100 cattle belonging to commoners. A small unfenced road crosses the block, with cattle-grids at either end.
- 5 The Gower Commons Initiative is a partnership of organisations including the landowners (the National Trust and the City and County of Swansea), the Countryside Council for Wales, the Gower Commons Association, the Gower Society and the emergency services.
- 6 Personal communication (email, 17 February 2010). Ian Rowat, director, Malvern Hills Conservators.
- 7 Department for Transport. *Highway Code*, paragraph 214 (edition on website at 31 March 2010).
http://www.direct.gov.uk/en/TravelAndTransport/Highwaycode/DG_069858
- 8 The figures given below are for recorded accidents that involve animals on the speed-limited roads on the Dartmoor commons. The data indicate that for these accidents the rate for injury-accidents in phase 1 has declined from 5.67 to 2.67 per annum and the accident rate for damage-only accidents has reduced from 36.00 to 11.67 per annum. These are reductions of 53 per cent and 68 per cent respectively. The figures for phase 2 are less clear, showing a slight rise in injury-accidents and a slight reduction in damage-only accidents. The figures are the average number of accidents per year over a three-year period, except for the 'after' figures in phase 2 where data from one year are used.

	Phase 1 (West Dartmoor zone)		Phase 2 (East Dartmoor zone)	
	Average PIA	Average D/O	Average PIA	Average D/O
Before 40 mph limit	5.67	36.00	0.67	6.00
After 40 mph limit	2.67	11.67	2.00	5.00

PIA = personal injury accident. D/O = damage only accident

Source: Devon and Cornwall Constabulary*

Devon and Cornwall Constabulary cited in Dartmoor National Park Traffic Management Strategy, review of priorities for 2005-2011, Dartmoor National Park Authority and Devon County Council.

- 9 Average value of prevention of road accidents was calculated for 2007 as follows: per fatality £1,876,830, serious injury £215,170, slight injury £22,230. Department for Transport, 2009. *The accidents sub-objective*. [internet] London: Transport Analysis Guidance (TAG) Unit guidance document 3.4.1, table 3.
Available at: <http://www.dft.gov.uk/webtag/documents/expert/unit3.4.php>

9 Tree-felling

Tree-felling, even when the trees are not old, can be controversial.

9.1 Heathland is not a stable environment and without grazing, or removal of trees and scrub, the heather and other plants which favour open ground will be lost as the habitat reverts to woodland. Heathland is valued for its cultural and recreational importance as well as for supporting wildlife. In order to protect and expand areas of lowland heathland, it is sometimes necessary to clear areas of secondary woodland (ie woodlands that have grown on formerly open ground).

9.2 However, this is frequently an area of conflict between those managing a common and local people who value the woodlands.



Before (above) and in progress during 2007(right). Photo: Katy Dunn.

cessation of grazing and lack of money and manpower, The SSSI was in unfavourable condition[†], which meant that Natural England was willing to fund work to restore it.

9.4 A volunteer, Ross Osborn, took on the task of drafting a management plan. He consulted the Chiltern Conservation Board, Buckinghamshire County Council, the National Trust, Natural England, the Forestry Commission and other specialists. This was approved by Lane End

9.3 An example of this is at Moorend Common near Frieth in Buckinghamshire, in the Chilterns Area of Outstanding Natural Beauty. The common is owned by Lane End Parish Council and covers about 22 ha. It is designated a Site of Special Scientific Interest (SSSI) because of its acid grassland meadows, which are rare in the chalk Chilterns. Aerial photographs of the land in 1948 and 2005 show that about two-thirds of the open grassland had been lost to sapling and scrub regeneration, due to the



[†] This means that the SSSI is not fully conserved but all the necessary management measures are in place. Provided that the recovery work is sustained, the SSSI will reach favourable condition in time.



Middle Meadow, after clearance, September 2009. Photo: Katy Dunn.

were retained to allow them to mature to a greater size for their landscape value. The plans were well publicised. Once the felling started, about one third of the residents raised concerns, because they were upset about the loss of trees in the area, even though they had agreed to the proposals. However, within six months there was a covering of new growth on the ground and after a year the cleared area had become part of the meadow and all but two of the residents were content with what was happening.

9.5 A similar situation occurred at Swineholes Wood at Ipstones in Staffordshire, a 25-hectare nature reserve which includes small areas of common land. Fisher (2008) reports that Swineholes wood was designated as an SSSI because it had remnants of acidic dwarf shrub heath. Local people regarded the area as a wood. Without consulting them, the Staffordshire Wildlife Trust, which manages the site, felled trees. This caused tension with local people. The trust apparently consulted Natural England and the Forestry Commission but not local people.

9.6 Local people may feel changes are being imposed on them and that their views are not valued, and this creates ill will. It is important to involve local people at an early stage of the preparation of any management plan; this avoids future problems.

Bibliographical references and further reading

Fisher, M, 2008. *Swineholes Wood—‘Too many trees being cut down’*. [internet]. Available at:

http://www.self-willed-land.org.uk/articles/swineholes_wood.htm

Parish Council in June 2007. Ross then discussed it with the residents of the 20 properties around the common. They were broadly happy with the aim to restore the former mosaic of open grassland, wood pasture and wetland. Areas selected for clearance were those which would recover most quickly as grassland, although certain trees

10 Case studies

We look at some examples of good and poor practice.

Odiham Common, Hampshire

10.1 Odiham Common (115 ha) is in north Hampshire, to the north east of the village of Odiham, separated from it by the Basingstoke Canal. It is registered common land. To the south of the canal is Broad Oak Common (three ha). For the purposes of the study they are treated as one unit and tend to be referred to as Odiham Common.

10.2 The common is crossed by minor roads, in particular the B3016 and Bagwell Lane, and a number of properties are located within the common. Since 1936 it has been subject to a deed of access under section 193 of the Law of Property Act giving the public rights of air and exercise on foot and horseback. In 1949 a scheme of regulation and management under the Commons Act 1899 was approved.

10.3 The common falls within a Site of Special Scientific Interest (SSSI) which was notified in 1992. The citation states that the SSSI (ie Odiham Common and beyond) is an extensive area of wood pasture (formerly grazed by cattle and horses), meadows and common land, with oak and hazel woodland containing abundant holly; owing to its historic management as wood pasture the ground flora is more typical of acid grassland; habitat diversity is provided by a series of grasslands of varying types reflecting different soil types, drainage and management; these support species indicative of unimproved grassland which are fast declining in lowland Britain.

10.4 In the condition survey of May 2008, Odiham Common was assessed to be in an unfavourable and declining condition owing to lack of open space (the target is 30 to 50 per cent throughout the site) and the need for management around open-crowned trees.

10.5 There are common rights of grazing (cattle, sheep, goats and geese), pannage and piscary, and to take estovers, gravel and bracken. It is believed the common has not been grazed by commoners since 1994.

10.6 Odiham common is owned, managed and maintained by Hart District Council. Broad Oak Common has no known owner, and so the land is under the protection of Hart District Council which manages and maintains it as though it was the owner.



Odiham Common in August 2007.

10.7 In 1995 Hart District Council commissioned consultants to prepare a detailed management plan for the site. In 1996 it applied to the Department of the Environment, Transport and the Regions, under section 194 of the Law of Property Act 1925, for approximately 2,000 m of perimeter fencing around the north-east compartment of the common, with gates and a cattle-

grid, for a five-year experimental period, to facilitate grazing of the common. There were objections and a public inquiry was held in 1998. Consent was given.¹

10.8 In 1999 there was significant felling across 11 ha and removal of timber from the coupes in the north-east compartment.

10.9 In 2002, having concluded that the fencing experiment had been successful in demonstrating the benefits of grazing, Hart District Council applied to the Department for Environment, Food and Rural Affairs, under section 194 of the Law of Property Act 1925, for consent for nearly 5,000 m of permanent fencing, ie to fence the whole common to facilitate grazing. There were many objections and a public inquiry was held in 2003. The inspector, Elizabeth Fieldhouse, rejected the application.²

10.10 The inspector, in analysing the benefit of the neighbourhood, considered that

Odiham Common was valued as a tranquil natural environment, which abounded in interesting flora and fauna that contributed towards its distinctiveness. [She expressed concern] that the proposed fencing would materially reduce the general accessibility and perceived openness as has been evident in relation to the experimental area. The fence would remove the ability to walk onto the common in places other than the customary paths and this ability distinguishes the common from other countryside generally. Fencing would fundamentally change the character of the open space that is the common and would be particularly harmful and intrusive where it is not within the edge of woodland areas....

10.11 She also noted the concern of local residents regarding the noise of vehicles passing over the cattle-grids which would 'be invasive to the tranquillity of the environment for people walking in the common'. She did acknowledge that the proposals would result in some benefits for maintenance of existing

pasture land, improving outgrown coppice and stemming any decline in habitats, but concluded that the overall effects of alternative solutions had not been fully thought through and the harm to the neighbourhood would outweigh the benefit to private interests.

10.12 The temporary consent for fencing expired in August 2003 and grazing ceased on the common.

10.13 Because the public inquiry had been so contentious, a breathing-space was needed before further attempts could be made to agree the management of Odiham Common.

10.14 However, in November 2003 Hart District Council wrote to various organisations with an interest in the common inviting them to submit their visions for the common and to complete a questionnaire. In the lingering climate of hostility and suspicion, these were not well received.

10.15 In 2004, Hart District Council called a stakeholders' meeting, to which it invited representatives from various organisations. At the first meeting it set up an Odiham Common Taskforce with a core team of representatives of three local societies, the county, district and parish councils, and English Nature. The Open Spaces Society, Hampshire Wildlife Trust and Hampshire County Council's rights-of-way officer were relegated to associate member, to be invited to attend as and when requested by the core team. This caused some indignation.

10.16 In 2005 an interim management dossier was produced for the Odiham Common SSSI to guide future management. Meanwhile, too, 'A Common Purpose'³ was published, providing guidance on how to engage stakeholders.

10.17 Little progress was made at Odiham over the next few years, meetings were fractious and some members spoke more for themselves than for a constituency. It was not inclusive.

10.18 However, the ranger appointed by Hart District Council organised and supported a series of activities on the common, for people of all ages, so that people from the neighbourhood and beyond continued to enjoy and learn from the common.

10.19 Then in 2008, led by Adam Green, Grounds and Countryside Manager at Hart District Council, the council decided to make a fresh start. The members agreed to fund a ten-year management plan for the common, following the 'A Common Purpose' process of consultation and engagement. The old management plan was put on hold, and a project steering group was established consisting of representatives of Hampshire County Council, Hart District Council, the National Trust (adjoining landowners and easement holders),



All singing from the same hymnsheet. Some members of the Odiham Common steering group. Left to right: Olivia Breffit (Natural England), Steve Lyons (Hart District Council), Stuart Royston (Potbridge Residents' Association), Adam Green (Hart District Council), Kate Ashbrook (Open Spaces Society) and Mark Simmons (Odiham Society). Photo: Surrey Advertiser.

Natural England, Odiham Biodiversity Group, Odiham Parish council, Odiham Society, Open Spaces Society, Potbridge Residents' Association and residents of Broad Oak.

10.20 Everyone appreciated that, in view of past controversy, it was necessary to tread carefully and to take time to heal any wounds.

10.21 The steering group agreed its objectives—in summary to provide advice and support to the district council, to facilitate good communication and sharing of knowledge and expertise, to ensure that the process set out in 'A Common Purpose' was followed and to seek and create opportunities for consensus over the management objectives for the common and their implementation.

10.22 The group's first meeting was held in November 2008. In January 2009 it hosted an open day at the Cross Barn, an attractive old building in Odiham, where relevant organisations had stands with information about the common and visitors were invited to sign up as stakeholders. The DVD 'Common Vision'⁴ ran continuously throughout the day.

10.23 At the same time Hart District Council, with advice from the group, sought tenders for a consultant to carry out the management-plan process. The steering group met the shortlisted applicants, and Hart selected Land Use Consultants (LUC) in February 2009.

10.24 The steering group organised three talks about commons during the year at the Cross Barn to provide social interaction and to generate interest in the topic. In the autumn of 2009 it published a history of the common based on local research.



Odiham open day, 24 January 2009

10.25 LUC prepared a paper setting out the facts about the common, called 'Understanding the Place'.⁵ This was published after consultation with the group.

10.26 At the group's meeting in June 2009, LUC conducted an exercise to identify agreed and differing views on future objectives for the common. The results were then distributed to members so that they could consult their organisations and report back.

10.27 The group agreed the wording for a questionnaire to find out how people use the common and what they value about it. This was distributed widely to all who had given their contact details, and through Hart District Council and Odiham Parish Council websites; it was advertised in the *Basingstoke Gazette* and *Hampshire Voice* newspapers. LUC attended the Odiham church fête on 11 July and an Italian market on 12 July to talk to people, collect their views and add them to the stakeholders' list.

10.28 The draft management plan was produced over a number of meetings. Using the responses from the questionnaires, LUC with advice from the steering group developed the vision, aims and structure of the management plan and gradually brought these together. The steering group's members consulted their organisations at each stage, while recognising that they were free to comment on the draft plan once it was published.

10.29 A number of issues remained controversial, such as grazing and fencing and tree- and shrub-management. A series of options were developed for each, setting out benefits and drawbacks or risks, so that people could comment freely.

10.30 The draft plan was published for consultation on 30 March 2010, with an eight-week consultation period.

Analysis

Pre 2008	Post 2008
Failure to identify all the interests in the common and to consult with them	Effort made to identify and consult all who wished to be involved
Wrongly assume that a few people were representative of larger constituencies	Took time to discover which organisations should be involved in steering group and to ensure that the members would consult
Lack of transparency	Inclusive and transparent process adopted
Too prescriptive	Options developed by steering group, for consultation
Insufficiently consultative	Continuous dialogue
Moved too fast	Allowed plenty of time
No significant budget	Hart DC approved budget for management plan

Hartlebury Common, Stourport, Worcestershire

10.31 The common is a 87-hectare site to the west of Hartlebury village on the eastern fringes of Stourport on Severn. It is close to the towns of Kidderminster and Bewdley, with the main A4025 Worcester Road crossing the site in the west. It is fringed by housing and industrial developments around its southern and western boundaries, with many houses having unofficial gated access directly onto the site. It has been owned by Worcestershire County Council (WCC) since 1982 and has been managed as a local nature reserve since 1979. The common falls within the Hartlebury Common and Hillditch Pool and Coppice Site of Special Scientific Interest. It became an SSSI due to its countywide importance for dry dwarf shrub heathland in 1955 and was re-notified in 1986.

10.32 Historically the common was unenclosed and its open aspect was maintained by grazing and by the removal of bracken, heather and wood for use as domestic, building and agricultural materials. With the decline in these traditional practices, the land scrubbed over and the SSSI deteriorated to unfavourable condition.

10.33 There are three registered commoners with rights to extract sand and gravel, though they are rarely exercised. As an 'urban' common, there are rights to walk and ride under section 193 of the Law of Property Act 1925.

10.34 In 1999 WCC commissioned a study to review management at Hartlebury Common which recommended a short-term programme of works. In 2000 WCC published the Hartlebury Common Management Plan 2001-2010

which sets out strategic aims and objectives for the site, reflecting its many uses and its high nature-conservation interest. Aims included investigation of alternative methods of management, including grazing.

10.35 Subsequent works were carried out under the Tomorrow's Heathland Heritage Project,⁶ partly in preparation for the introduction of grazing, and a report was published in March 2004 investigating the implications and practicalities of grazing (Button, 2004). In April 2007 an application to Natural England under the Higher Level Stewardship Scheme (HLS) failed because NE would not support a project which did not include grazing by cattle. In 2008 Natural England agreed to fund the ten-year management plan as outlined in Button's report, with a work programme to include grazing.

10.36 At about the same time, WCC commissioned Land Use Consultants (LUC) to consult on the introduction of grazing to Hartlebury Common and the required site infrastructure. LUC published a report in August 2008, in which it set out proposals for grazing and fencing. It consulted on these and held a public meeting on 30 September 2008. The process was carried out quickly because of the need to submit an application for HLS funding the following year.

10.37 WCC submitted an application to the Planning Inspectorate for works on the common, under section 38 of the Commons Act 2006, on 14 November 2008. The works consisted of fencing around the main common block, with 6,793 m of high-tensile wire (the council decided against using barbed wire following the consultation). The fencing was not to be around the entire perimeter of the common, and 12 blocks of land were to be isolated as paddocks. There were objections from the Open Spaces Society, a local resident and a commoner. A two-day public inquiry was held in July 2009 and the decision to allow the application was published on 18 September 2009.⁷

Analysis

10.38 Although WCC consulted extensively over the years, it omitted to consult the Open Spaces Society until 2008. The last phase of the process was undertaken swiftly to meet the deadline for the HLS funding. If the Open Spaces Society had been involved from the start it might have been able to negotiate changes to the proposals, thereby avoiding a contentious public inquiry and ensuring the plans could be finalised smoothly. This shows that perceptions about consultation can vary and it reinforces the need to ensure that everyone has been included from the outset.

Crowborough Common, East Sussex

10.39 The northern end of this common (85 ha) adjoins the built-up area of Crowborough, and it stretches southwards and downhill from there into the countryside. Since 1936 there has been a deed of access under section 193 of

the Law of Property Act, giving the public rights to air and exercise on foot and horseback.

10.40 The common lies within the High Weald Area of Outstanding Natural Beauty and is a site of nature conservation importance. The common contains a variety of habitats including woodland, ghylls, heath and acid grassland.

10.41 There are common rights of grazing (cattle and sheep) and turbary, and to take estovers, firewood and turf. It is believed that such rights have not been exercised since the 1940s.

10.42 The area as a whole is greatly valued and used by local people—for walking, recreation, sledging and birdwatching. Children play and make dens there, enjoying its wild nature.

10.43 Crowborough Common is owned, managed and maintained by Crowborough Beacon Golf Club. The fairways, rough, greens and tees of the golf course cover less than half of the common. The club has a course-management policy which aims to carry out conservation works to maintain open heathland where possible. The club wanted to sell part of the common to build a care home. In 2008 it applied to the Planning Inspectorate, under section 16 of the Commons Act 2006, to swap some land. Section 16 allows the owner of any registered common land to apply for its deregistration, but if the area is greater than 200 sq m, exchange land must be provided.

10.44 The land to be released was 1.39 ha and the replacement land was 1.46 ha. There were objections and a public inquiry was scheduled to start in October 2008, but it was opened and closed on the first day because the capacity of the venue was inadequate for the number of objectors. It was postponed until



*The view from the part of Crowborough Common which was threatened with deregistration.
Photo: Anne Hart.*

March 2009. The inspector Peter Millman, on behalf of the secretary of state, refused the application⁸

10.45 The inspector, in analysing the interests of the neighbourhood, considered that it was used as an amenity by local people. The inspector noted that children had built a camp and there were faintly-marked paths indicating use of the area. He found that the ‘loss of land close to the town would be less likely to be balanced by the gain of land some distance from it’. He expressed concern that the amenity value of having a woodland walk to a bus stop could not be replaced, and that the relevant land was remote from the town. He said ‘what seems to be valued by local people about the land is the view from it. It is exceptionally extensive and takes in not just the horizon of the South Downs and a glimpse of the sea, but the intervening areas of the Weald’. He concluded that the ‘views from the replacement land would not be an acceptable substitute for most local people’, and that ‘in terms of amenity and views, the replacement land would not be as valuable to the neighbourhood as the release land’. In addition he said that granting the application ‘would neither benefit nature conservation nor conserve biodiversity in the immediate future’.

10.46 Even after the inspector’s decision was published, local people remained concerned about the management of the common.

10.47 They presented a proposal for a Friends of Crowborough Common to the chairman of the golf club in February 2009. The aims and objectives of the society would be to promote the conservation maintenance, preservation and peaceful enjoyment of the common for all its users. The local people considered that such a group would be able to apply for grants and funding for the large areas of the common that are not used as a golf course. A year later the golf club had not responded.

Analysis

- The application was driven by the need to raise funds for the maintenance of the common and the golf club.
- There was insufficient research and consultation, for instance not all the commoners were consulted.
- There was no consultation on other options or different methods of managing the common.
- Deregistration was presented as a *fait accompli* so that part of the land could be developed.
- If there had been better consultations and more discussion, a costly public inquiry might have been avoided.

Notes

- 1 Decision letter by CA Robbins, CYD 1077/1055, 5 August 1998.
- 2 Decision letter by Elizabeth Fieldhouse, CL1/3/35, 30 June 2003.

- 3 Short, C. Hayes, E. Selman, P. & Wragg, A., 2005. *A common purpose: a guide to agreeing management on common land*. Countryside and Community Research Unit, University of Gloucestershire, for the Countryside Agency, English Nature, National Trust, Open Spaces Society and Rural Development Service Defra. This has been revised and endorsed by Defra's National Common Land Stakeholder Group in 2012. It is on the Foundation for Common Land website at <http://www.foundationforcommonland.org.uk/commons/a-common-purpose-guide>
- 4 *Common Vision.*, 2008 [DVD] Hampshire: Hampshire County Council, Hampshire & Isle of Wight Wildlife Trust, Hart District Council, Natural England. Available from: <http://www3.hants.gov.uk/hampshire-countryside/countryside/commons-registration.htm> (click on 'commons video' tab). This was produced as an introduction to the public about the value of commons, focusing particularly on the heaths of southern England.
- 5 Land Use Consultants, 2009. *Odiham Common, understanding the place*. [internet] Hart District Council. Available at: http://www.hart.gov.uk/understanding_odiham_common_v3.pdf
Further information, including 2010 management plan, at http://www.hart.gov.uk/index/leisure/leisure-countryside/leisure-odiham_common-2.htm
- 6 Tomorrow's Heathland Heritage Project ran from 1997-2010. It was supported by the Heritage Lottery Fund and Natural England (initially as English Nature) with the aim of reversing the loss of lowland heath.
- 7 Decision letter by Martin Elliott, COM54, 17 September 2009 para 50. Available from: http://webarchive.nationalarchives.gov.uk/20101014072450/http://www.planning-inspectorate.gov.uk/pins/common_land/decisions/index_2009.htm
- 8 Decision letter by Peter Millman, COM21, 9 April 2009. Available from: http://webarchive.nationalarchives.gov.uk/20101014072450/http://www.planning-inspectorate.gov.uk/pins/common_land/decisions/index_2009.htm

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Appendix 1

Development of criteria under section 194 of the Law of Property Act 1925

The legal adviser to the Board (later Ministry) of Agriculture and Fisheries, Frank Jones stated in March 1920: ‘The Ministry of Agriculture and Fisheries would be glad of any legislation which would without injustice preserve commons and open spaces for the enjoyment of the public’.¹

On 19 February 1920 a Law of Property Bill was introduced before parliament and received its second reading on 3 March.² The bill was first, and unusually referred to a joint select committee of both houses. A clause was inserted in June 1920, explained in Appendix No 1 of the committee’s report, ‘it is true that, in the past, land has in many cases been enfranchised at common law without preserving the rights of common to the commoners, and the common has been closed. Where a right of common exists the new clause will give rights to the public in regard to land whether or not enfranchised. The object of the clause is to secure that commons, particularly those near large towns, shall not be inclosed to the prejudice of the public’.

Following discussions with Lawrence Chubb, the Secretary of the Commons and Footpaths Preservation Society, a clause was agreed³ providing for public access, subject to a scheme or provisional order for the regulation of the land. On report⁴ the clause was amended to include ‘or in any case where it is proved to the satisfaction of the minister that those commonable rights have been otherwise extinguished and the minister consents to the exemption of the land from the operation of this section; but the minister in giving or withholding his consent shall have regard to the same considerations and shall, if necessary, hold the same inquiries, as are directed by the Commons Act 1876’.⁵

This meant that consent could only be given if the minister was satisfied that it was expedient to do so, having regard to the benefit of the neighbourhood as well as the private interests in the land, and any other relevant factors.

A further clause gave the lord of the manor or other person entitled to the soil power to make a deed declaring that the section (above) applied to their land, granting rights to the public.

Royal assent was given for the Law of Property Act on 29 June 1922 which brought sections 102 and 103 into effect. Various consolidation bills were considered and received royal assent on 18 December 1924. Sections 102 and 103 of the Law of Property Act 1922 became sections 193 and 194 of the Law of Property Act 1925.

The first issue of the journal of the Commons, Open Spaces and Footpaths Preservation Society, in November 1927, records the background of sections 193 and 194 and the society's hopes for the future.⁶ The society's officers thought section 193 was a considerable gain.

1. November 1920 Ministry of Agriculture and Fisheries (MAF) 48/155 pt1.
2. HL Deb 3 March 1920 vol 39 cols 250-280.
3. November 1920 MAF 48/155 pt 1.
4. HL Deb 24 May 1921 vol 45 cols 320-322.
5. Commons Act 1876, section 10.
6. Chubb, Lawrence., 1927. The Law of Property Act, 1925. *Journal of the Commons, Open Spaces and Footpaths Preservation Society*. 1927(1), p7.

Appendix 2

Extracts from decision for works on common land

This appendix gives extracts from the secretary of state's decisions on applications for works on common land, covering a range of landscapes and habitats, under the Law of Property Act 1925 and the Commons Act 2006, with particular reference to the interpretation of 'benefit of the neighbourhood'. The decisions issued since 1 October 2007 are available on the Planning Inspectorate website.¹

The decisions are divided (roughly) according to the nature of the common. Unless stated, no public inquiry was held and the case was determined by written representations, in which case the inspector may not have made a site visit. If an inspector from the Planning Inspectorate took the decision, he or she made a report to the secretary of state who published a decision letter. If the case was relatively non-contentious, it was determined by an official in the Department for Environment (Law of Property Act) or in the Planning Inspectorate (Commons Act 2006). The secretary of state is the Secretary of State for Environment, though the exact title varies.

Particularly relevant, interesting or important quotations are highlighted in bold.

Fairly small areas of common in agricultural landscape

Thwaite Common, near Erpingham, north Norfolk.

Thwaite Common Management Committee applied for 3,120 m of fencing on two parts containing 15.8 ha and 2.9 ha. The total area of common is 30.9 ha. The Open Spaces Society and others objected. There was a public inquiry. The inspector, Gyllian D Grindey, recommended that consent be withheld and the secretary of state agreed (CYD 1077/947, 1 Sep 1997). Law of Property Act 1925, section 194.

The inspector said:

... **the present benefit to the neighbourhood attached to the common relates to its vital contribution to the appearance, character and local distinctiveness of the hamlet.** ... numbers of people prize and cherish the walks and views to be had on the common and its surroundings. They value it in its present state as a tranquil, semi-natural and open space, where they may walk freely and which abounds with interesting plants and flowers. ...

It seems to me that the common is **a parochial monument of a sort.** Both its physical self and its historical meaning are freely accessible to anyone who wishes to walk across it. **Its openness to communal use is a part of its local distinctiveness, in contrast with almost all oth-**

er rural land ... which is privately owned and therefore excludes people. Being an open common is what makes this area unique and different from almost everywhere else. If the common were enclosed, then it would change the experience of using the common. ... Fencing would, I believe, result in the common losing its local distinctiveness and it would become more like other land in rural areas.

Secondly, a fence, almost by definition, is a barrier and creates a mental as well as a physical barrier in my view. ...

Actual obstruction by the fences would be significant as far as those wishing to use the common would be concerned. ... Despite the number of proposed stiles and kissing gates around the perimeter, access would be restricted to solely these points and ease of access would be reduced. The above changes would amount to a significant loss and inconvenience and, I consider, would not be for the benefit of the neighbourhood. (paras 27-30)

Bowden Down, Brentor, west Devon.

Brentor Commoners' Association applied for retrospective consent for 900 m of fencing around part of the common, which is 11.35 ha. The Open Spaces Society and others objected. There was a public inquiry. The inspector, Gyllian D Grindey, recommended that consent be withheld and the secretary of state agreed (CYD 1077/1125, 31 May 2000). Law of Property Act 1925, section 194.

The common is set on a ridge of higher ground where the prevailing pastoral landscape is small-scale and intimate. Note that the fencing was already in place. The inspector said:

... the re-introduction of grazing has resulted in a clearer swathe of land, with the vegetation kept down by the stock. However, in my view, **the fence changes the experience of using the common.** Fencing has resulted in the common losing its local distinctiveness and it has become just another piece of enclosed farmland, albeit that passers by can see into it because there are no roadside banks or hedges. A fence ... creates a mental as well as a physical barrier. **The land does not have the appearance of an area of land where the public may enjoy free access.** It has the appearance of a private paddock from which one is excluded. ... This amounts to a loss and an inconvenience. (para 54)

Standon Gravel Pit, Hertfordshire

The landowner applied for retrospective consent for 246.5 m of fencing around, and hedges and gates to, common land known as the gravel pit which is 0.98 ha. The Open Spaces Society and Hertfordshire County Council objected. Gina Warman for the Secretary of State for Environment, Food and Rural Affairs withheld consent (CLI 240, 24 July 2008). Law of Property Act 1925, section 194.

The secretary of state held that there was insufficient evidence that the works are necessary to prevent fly-tipping and no evidence that travellers would occupy this particular site; free access to the site would be restricted, and ‘the fencing and gates, and the physical barrier they created, **would have a damaging effect on the use and perception of the common which would deter the public from using the land for lawful activities and which would not benefit the neighbourhood**; and that the works would not be consistent with the government’s wider objective to retain common land as open and unenclosed areas.

Upland commons in big landscapes

Blackdown and West Blackdown Commons, Mary Tavy, west Devon.

Mary Tavy Commoners’ Association applied for fencing with cattle-grids on both sides of a two-mile section of road. The Open Spaces Society and the Dartmoor National Park Authority were among the objectors. Public inquiry. The inspector, Mr R N Parry, recommended consent and the secretary of state agreed (DRA1/MB/1100, 25 October 1991). Law of Property Act 1925, section 194.

The A386 road crosses high unfenced moorland between Mary Tavy and Bridestowe. The application was sparked by the numerous animal accidents caused by speeding vehicles, which was leading to withdrawal of stock and undergrazing of the commons. The inspector noted:

that the fencing would be located in a very attractive landscape that lies within the Dartmoor National Park [and that] within National Parks development should be subject to special scrutiny. ... To a degree at least **fencing would be an intrusive and unwelcome element in the local scene**. ... While it would not obscure the superb views that are available, **inevitably it would tend to interrupt and interfere with them**. (para 109)

Of more concern, it seems to me, is the fact that the fencing would be both a physical and a psychological barrier to access to the adjoining land. **I do not doubt that the freedom to wander at will over a landscape that has remained little changed for centuries is an important element of the ‘moorland experience’**. (para 112)

He looked at alternatives and concluded ‘stockproof fencing to be the only effective solution to the problem of animal/vehicle conflict on Blackdown’. (para 116).

In deciding how the dilemma should be resolved it is necessary to make a value judgement. In particular it is necessary to weigh the gains that a fencing scheme would offer, in terms of the welfare and safety of the travelling public and the moorland animals, against the likely visual impact and the consequences for accessibility to the adjoining areas of common land. On balance I am persuaded in this instance in favour of the fencing. (para 117).

The inspector concluded that ‘the introduction of fencing would be beneficial to the “health, comfort and convenience” of both the commoners and the wider populace’, and ‘necessary for the economic and social well-being of the locality’. (para 118)

Caldbeck and Uldale Commons, Cumbria

Lake District National Park Authority applied for a fence eight km long, for a maximum of ten years, between Caldbeck Common (3,726 ha) and Uldale Common (1,381 ha). The Open Spaces Society and the Friends of the Lake District objected. There was a public inquiry. The inspector, Chris Frost, recommended that consent be withheld and the secretary of state agreed. (CL1/1/3/56, 10 April 2003). Law of Property Act 1925, section 194.

The inspector said:

Part of the benefit of the commons to the neighbourhood stems from the unimpeded access they provide to the fells and the enjoyment and sense of freedom and wilderness this imparts. The existence of the fence would detract from the sense of freedom and feeling of wilderness and would impede access and concentrate movements over the commons by restricting crossing points along the line of the fence. As a consequence, its disbenefits would operate at both physical and psychological levels. (para 52)

The inspector concluded that the fence

would not be to the benefit of the neighbourhood, in the context of the enjoyment of the commons as an open space. Furthermore, it would result in **disbenefits to** some private interests (such as those responsible for shepherding gaps in the fence) and **other interest such as landscape (if a harsh division between vegetation types were to become established).** (para 63)

Rishworth Moor, Ripponden, Calderdale

The landowner applied to erect a fence approximately five km long, dividing the common, the total area of which is 1,599 ha. The Open Spaces Society and Ramblers objected. There was a public inquiry. The inspector, Chris Frost, recommended that consent be withheld and the secretary of state agreed. (CYD/1077/1107, 13 March 2002). Law of Property Act 1925, section 194.

The inspector said:

The benefit to the neighbourhood stems from the unimpeded right of access to those on foot or on horseback onto this moorland landscape, **with its sense of wilderness and history, together with its wildlife interest. ... The unenclosed character of the moor makes a strong contribution to the sense of wilderness found in this harsh and exposed landscape.** The existence of fencing would detract from this sense and emphasise the part played by the farming community in managing the moor and maintaining its appearance and ecological integrity. I have no doubt that the visual integrity of the landscape would

be best served without the fence... the fence would affect this [access] in both a physical and psychological manner. The effect would be to deter access onto the common along the length of the fence and probably to concentrate passage onto the common in locations where suitable access points were provided. **As a consequence the sense of freedom that emanates from such an open landscape would be curtailed.** (paras 27 and 31)

The purpose of the fence was to prevent road accidents, and the inspector considered that the loss of some sheep is almost inevitable and that ‘the impact of losses on the business would have to be extremely serious to justify the erection of a fence on the common’. (para 33)

Heathland commons, in heath and wooded landscape

Chudleigh Knighton Heath Common (SSSI), Devon

Devon Wildlife Trust applied to erect 2.3 km of permanent stockproof fencing around nine ha. There were two objections but not from the Open Spaces Society. Gina Warman on behalf of the secretary of state gave consent (CLI 426, 19 June 2008). Commons Act 2006, section 38.

The secretary of state:

accepted that permanent fencing is required to facilitate grazing, without which the site’s value in terms of ecology and as an amenity resource will deteriorate further, and that it has proved successful in halting the decline elsewhere on the common. Furthermore, it is accepted that public access will not be prevented, and in time **grazing will make the site more open and accessible, enabling more users to enjoy the area.** (para 14)

Upper Hollesley Common (SSSI), Suffolk

The Suffolk Wildlife Trust applied for permanent, stockproof, ring fencing 90 cm high to enclose 19 ha of an 89-ha common. The Open Spaces Society and others objected. R Pritchard on behalf of the secretary of state gave consent with a requirement to review the need for the fencing after ten years (ref 25 August 1992). Law of Property Act 1925, section 194.

The conclusion reached is that the fencing and reintroduction of grazing thereby enabled will be in the interest of restoring and maintaining the traditional heathland landscape, that it will, on balance, **enhance the visual appearance and enjoyment of the area by local inhabitants,** and that it is expedient that consent should be given. (para 11)

Upper Hollesley Common (SSSI), Suffolk

The Suffolk Wildlife Trust applied for fencing, for up to 20 years, 1179 m enclosing 93 ha of a 96-ha common. There were objections but not from the Open Spaces Society. Gina Warman on behalf of the secretary of state gave consent for 20 years, with a requirement to review the need for the fencing after ten years (CLI 425, 4 June 2008). Law of Property Act 1925, section 194.

The Suffolk Wildlife Trust intended to remove the fencing for which it had obtained consent in 1992 and replace it with fencing on a different line. It had considered the visual amenity and would set the roadside fencing back approximately five metres from the road behind a low bank which is screened by trees.

The secretary of state noted that extra access points would be created in the fence line, with gates left open when grazing was not taking place and measures to limit the visual impact would be put in place. The secretary of state concluded that the primary aim of the proposals is to 'facilitate the future management of common without adversely affecting the health, comfort and convenience of the local inhabitants'. (para 11)

Chobham Common (National Nature Reserve, SSSI and part of Thames Basin proposed SPA), Surrey

Surrey County Council applied to fence three sides of the northern part of the common (4,025 m) for seven years to allow extensive grazing by cattle. The Open Spaces Society and others objected. There was a public inquiry. The inspector, David Asher, recommended that consent be withheld and the secretary of state agreed (CYD/1077/1104, 21 October 1998). Law of Property Act 1925, section 194.

There is a deed of access under Section 193 of Law of Property Act 1925. The secretary of state:

notes and accepts the inspector's view that while the proposed fence and gates would not materially reduce the general accessibility of the common, as most people used the customary access points which would be provided with a gate or stile, nevertheless **it was the unfenced and ungated nature of the common which distinguished it from most of the countryside.**

He agreed that extensive grazing would be an additional benefit but this did not outweigh the harmful effect of the proposal.

Limestone grassland

Llyncllys Common (SSSI). Llanyblodwel, Shropshire

Shropshire Wildlife Trust applied to erect 2,000 m of stockproof fencing enclosing nine ha of 39-hectare common, with a review after ten years. There were objections, but not from the Open Spaces Society. R M Bone, on behalf of the secretary of state, gave consent (CYD4/1077/861, 8 August 1995). Law of Property Act 1925, section 194.

The secretary of state noted that attempts by Shropshire Wildlife Trust to manage the common satisfactorily without the reintroduction of grazing had failed and that reintroduction of traditional grazing methods is now viewed as

an appropriate means of ensuring that the open access of enclosed commons is maintained. (paras 14 and 15)

Llyncllys Common (SSSI). Llanyblodwel, Shropshire

Shropshire Wildlife Trust applied to erect 1,426 m of stockproof fence as an extension of existing fence on Llyncllys Common for ten years. There were no objections. Gina Warman, on behalf of the secretary of state, gave consent (COM18, 16 September 2008). Commons Act 2006, section 38.

It is accepted that the lack of grazing has led to the decline of this nationally important site in terms of ecological value and openness, due to scrub and bracken encroachment. In addition, it is accepted that grazing is the most effective and sustainable means for the trust to meet its obligations of managing the site and restoring this threatened habitat, in line with Government policy. However, it is recognised that it would be difficult to graze the site without fencing. Consequently, the proposals contained in this application are the best means of achieving these objectives. (para 13)

Woodland

Ewyas Common, Herefordshire

The landowner applied to make a car park of 80 sq m; the total area of the common is 50.25 ha. The Open Spaces Society and others objected. Gina Warman, on behalf of the secretary of state, withheld consent (CL1 299, 9 Jan 2007). Law of Property Act 1925, section 194.

The applicant wanted to provide a parking area for local inhabitants. The objectors did not share the landowner's view that provision of parking area would provide parking for local inhabitants.

The secretary of state concluded:

there is little evidence that the proposal would contribute to the benefit of the neighbourhood, in the context of the enjoyment of the common as an open space [and] there is no evidence that congestion exists on the common caused by people trying to park [and while] the proposal would entail the loss of a small area of common land, **this loss could affect the diversity of wildlife which exists on the common.** (para 15)

Notes

- 1 Decisions from 1 October 2007 can be viewed at:
<http://www.planningportal.gov.uk/planning/countryside/commonland/decisions>

Appendix 3

Works on common land exempted from consent

The exemption order¹ defines a number of activities for which consent under section 38 of the Commons Act 2006 is not required. This process was established to assist in the management of common land, while minimising the scope of any unlawful works which could compromise the cultural, conservation or recreational value or the openness of a common.

It is essential for the applicant to confirm that the proposed works come within the terms of the exemptions, by placing a notice on the site and informing the secretary of state. In practice he merely needs to send a completed notice at Appendix A of the Planning Inspectors' Guidance note 1c² to the Planning Inspectorate who will display it on its website.

The four exempt categories are:

1. The erection of temporary fencing for a period not exceeding six months for grazing in the exercise of common rights or nature conservation. The area must not exceed the lesser of ten ha or ten per cent of the registered land and no part of the land to be enclosed has, during the previous six-month period been enclosed without section 38 consent, by virtue of this paragraph.
2. The erection of temporary fencing, for a period not exceeding three years if the fence is wholly on moorland or one year in any other case, to enclose land for the purpose of—
 - (a) carrying out work which facilitates the growth or restoration of vegetation of the benefit of the common land; or
 - (b) protecting the vegetation during a period of such growth or restoration, in so far as such protection is necessary or expedient to enable the growth or restoration to occur.

The exemption in respect of works specified in this paragraph only applies if—

- (a) the area to be enclosed does not, either by itself or cumulatively with any other areas within the same register unit enclosed without section 38 consent by virtue of this paragraph, exceed one per cent of the area of the register unit of which it forms part; and
- (b) no part of the land to be enclosed has, during the period of one year immediately before the works are carried out, previously been enclosed without section 38 consent by virtue of this paragraph.

3. The erection of temporary fencing, for a period not exceeding five years, to enclose land in order to restrict access to it in the interests of nature conservation, where that is required under the terms of a written agreement relating to the management of the land, being—
 - (a) an agreement between the owner of the land and Natural England; or
 - (b) an agreement between the owner of the land and the secretary of state, entered into before the commencement of the order.

The exemption in respect of works specified in this paragraph only applies if the area to be enclosed does not, either by itself or cumulatively with any other areas within the same register unit enclosed without section 38 consent by virtue of this paragraph, exceed one per cent of the area of the register unit of which it forms part.

4. The installation of a row, not exceeding 200 m in length, of obstacles (such as bollards or large stones) which, whether by themselves or together with any existing obstructions interrupting the row, are intended to prevent or restrict vehicular access to common land, where the owner reasonably considers that such access would interfere with or be detrimental to—
 - (a) the use of the land by members of the public for the purpose of open-air recreation pursuant to any right of access;
 - (b) the exercise of rights of common; or
 - (c) nature conservation

The exemption in respect of works specified in this paragraph only applies if—

- (a) no other row of obstacles is installed without section 38 consent by virtue of the paragraph, and remains in place, on land forming part of the same register unit; or
- (b) the works consist of the extension of an existing row of obstacles which has been installed without section 38 consent by virtue of this paragraph, and the combined length of the existing row and the extension does not exceed 200 m.

These exceptions can be used by the owner of the land, any person entitled to common rights, any person acting with the consent of the owner (1 and 2), and Natural England (3).

Examples of exempted works

Portland Bill, Dorset: two temporary post-and-rope enclosures to reduce recreational pressure and encourage the restoration of maritime grassland.

Ditchling Beacon, Lewes, East Sussex: temporary fencing to facilitate six months' winter grazing.

Kempsey Common, Malvern, Worcestershire: regularly-spaced posts to restrict vehicular access.

Gembling Common, Driffield, East Riding of Yorkshire: temporary electric fencing to contain grazing animals.

Little Asby Common, Cumbria: replacement of fence around part of Sunbiggin Tarn, for three years to allow cattle grazing and prevent cattle having access to the tarn.

Notes

- 1 exemption order (SI 2 587/2007)
- 2 Common Land Guidance Sheet 1c, works exempt from section 38 process, <http://www.planningportal.gov.uk/planning/countryside/commonland/guidance>

Appendix 4

Quotations from people about their local commons

I value Downley Common as it still engenders a timeless quality, a touch of the wild, while incorporating a wonderful kaleidoscope of fascinating interests for all. Intriguing discoveries in the undergrowth for young nature enthusiasts, exciting archaeological finds, from Romano-British field systems to tank tracks from the last war. Nerve-racking inter-village cricket and football, the merry chatter of the ‘Simply Walk’ crocodile on Monday mornings, and the so-evocative call of the kites and now the buzzards wheeling gracefully across the heather and gorse-bedecked heath. Not forgetting the excitement from time to time as the fire engines race madly to ‘top common’ on a Saturday night to extinguish a burning car, so neatly parked in the hawthorns by young men from High Wycombe. The annual Downley Day fête lasts a whole weekend. All the village clubs and associations attend; it’s a living, lively, colourful and enriching example of how a simple common can provide a deep sense of community ownership, a fundamental pride in the spirit of place.

Downley Common, High Wycombe, Bucks

I use Crowborough common for walking and studying animal and plant life. In snowy weather hundreds of local people use it for sledging. The whole common is available for local people to enjoy for air and exercise. It is a very beautiful place with marvellous views to the South Downs, and this wonderful local amenity is highly valued.

I also value the fact that common land has been untouched for generations and that, because of this, there is a marvellous diversity of plant and animal life there.

Crowborough Common, East Sussex

Cookham Moor is a special place. Its beauty and its setting are such that it has been the subject for Stanley Spencer and other artists. Its causeway provides an avenue linking the Rise and the village and provides a welcoming place for approaching visitors. It grows hay for commoners and is host to a happy mixture of activities ranging from angling to horse-riding. The buttresses of the causeway are inviting to youngsters. For families it offers a safe route to school even in times of flood. The views are refreshing and the wildlife various. These things are passionately valued and quietly enjoyed.

Cookham Moor, Windsor and Maidenhead

When I am there I am always conscious of that vast army of ancestors who in past generations have stood where I stand and have walked where I walk. I can imagine those who have gone before who in their time wondered and marvelled as I wonder and marvel at the freedom to be at peace in such wonderful places, with views and experiences which have brought pleasure to unknown

millions who have gone before who generate a sense of spiritual kinship and with whom I feel a strange but powerful bond.

Worcestershire commons

I value the commons near us for their openness, tranquillity, wildness, cultural heritage, recreation, open-air archaeology, community use, agricultural practices, wildlife and biodiversity, the chance for involvement and the contribution they make to green infrastructure.

Lake District commons

I have always thought that one of the fascinating aspects of commons is how dearly they are held by the people who use them on a regular basis. People really do care about these open spaces and what happens to them. They view them as belonging directly to them.

Blackdown and Marley commons, West Sussex

Zoar Common is the link between my home and the high moorland and is welcoming, familiar, territory where I'm most likely to meet near neighbours coming and going, exchanging a few friendly words and keeping in touch with local matters. Zoar Common lifts the spirits as the gateway to the moor, but in wet and windy weather it offers shelter and the comforting prospect of 'nearly home'.

Zoar Common, Mary Tavy, Dartmoor

My local commons are areas of land that are something special, different from surrounding private land such as arable farmland. They can, to some extent, take you back in time to an earlier, unenclosed age.

They are less likely to be fenced off, and (especially nowadays) are land where you can wander around without fear of some landowner telling you to clear off. They are all interesting places, whether unenclosed grazing land 'within' a village like Hanworth or Thwaite Commons, areas of boggy, wet woodland like Honing and Crostwight Commons, salt marshes (Brancaster) or dunes (Holme), staithe, heaths, fens. Sometimes they provide valuable interest and variety in areas which otherwise consist of cultivated arable land.

Norfolk commons

Furze Common is a lifeboat for wildlife. It is four to five acres with areas of long grass and unmanaged woodland and a pond. We have regular sightings of three types of woodpecker and three types of owls. We like it a lot and walk on it every day.

Furze Common, Barsham, Suffolk

Moorend Common, to me and my wife, is a place of wonderment. Every time we go down there (about once a day) we see or hear something new. I watch birds and in the evening, you can see them hunting but in total peace. In spring and summer, the southern marsh orchid smothers the South Meadow in purple from edge to edge—it's a sight that never tires.

It's the stillness, the mosaic of colour and shape and the sense of being somewhere else despite the adjacent road and overflying helicopters.

Moor End Common, Frieth, Bucks

I like the fact it is different from parks. It doesn't have fences round it; it isn't stuffed full of flower beds, or intensively managed by the council. It's beautifully plain and simple—gives a sense of openness in the middle of Clapham. I also like the history attached to it. I know that if I wanted to I could still drive a flock of sheep over it: ridiculously quirky in modern London—but a link to the past.

Clapham Common, London

I like the wild feeling and untidy nature of the common, which is an open space alongside the River Lowther, where people can walk with their dogs. Some incomers want to make it into a smart village green. I don't want that.

Bomby Common, Cumbria