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INFORMATION SHEET NO: C3

Driving and parking on your local open space

1. Residents often want to be able to stop cars, motorcycles, and even lorries and other large vehicles, from being driven and parked on their local open space. Such spaces are valued for quiet recreation and exercise, to be enjoyed for their own beauty or the views to be seen from them. It is intolerable that these attractions should be marred.

2. There are several legal powers which can assist, but first it is necessary to decide what type of open space it is that needs protecting and to have as much information as possible about its ownership.

The status of open space

3. The open space we are considering here may be placed in one of the following classes.

a. Village green or town green, as finally registered under the Commons Registration Act 1965 or registered under the Commons Act 2006, including any substituted or new area which has been registered.

b. Recreation ground allotted under an inclosure award (formally known as a recreation allotment) which has *not* been registered as a town or village green (most órecreation groundsô are likely to be in class d).

c. Common land as finally registered under the Commons Registration Act 1965, including any new or substituted area so registered, but not including land registered as a town or village green (class a).

d. Other open space held in public or charitable trust for the recreational benefit of the public.

e. Other open land not included in a - d above, where the

local inhabitants have freely indulged in lawful sports and pastimes for more than 20 years.

4. It should be noted that we are not here considering country parks or large areas of open countryside where public enjoyment may be incidental to other purposes.

5. You should bear in mind that what may appear to be a single open space could in fact consist of two or more adjacent areas which have a different status and/or different owners. This should be carefully researched as it could affect the remedies available on the different parts and who should seek them.

Ownership of the open space

6. It is necessary to consider who is the owner of the land. In theory every piece of land in England and Wales has an owner though he, she or they may not be traceable and may not be aware that they are the owner. The true ownerôs ancestor may have emigrated to Australia many years ago and the family has lost touch. It is possible to become the owner in possession by enjoying more than 12 years adverse possession without interruption by the true owner. (See our Information Sheet C4.)

7. Evidence about the lordship of a manor is not necessarily evidence of ownership of land within the manor, but it may be possible to show with reasonable certainly that parts of it have never been disposed of separately. It is also necessary to be cautious about relating modern parish or other administrative boundaries to ancient manor or current property boundaries. There need be no connection.

8. For our purposes, the appropriate owner may be either the

freeholder or a lessee. It may be within one of the following groups.

a. A county, unitary, borough or district council.

b. A parish or community council.

c. The Crown, Duchy of Cornwall or Lancaster, conservators, the National Trust, or another public body, charity or utility undertaker with (but not necessarily having used) powers to make or enforce by-laws or regulations.

d. Any other known person or company.

e. Unknown, but see our information sheet C4 for methods of dealing with this situation.

Objectionable activities

9. Any activity not authorised by the owner or the ownerôs authorised employee or agent, and not exercised by virtue of any private property right, can be dealt with as follows.

10. The owner can prosecute under by-laws which forbid the activity and/or can take civil action against it as a trespass, including seeking damages and an injunction. These powers of an owner are usually the simplest to put into effect. Local residents or legitimate users of the open space will probably have to produce the evidence and provide witnesses in support. (See the **How you can help** section at the end.)

11. Joy riding on motorcycles or in other motor vehicles, or learning to ride motorcycles or drive other vehicles anywhere on áany common land, moorland or land of any

other description not é part of a roadô including any public footpath or bridleway crossing it, can be dealt with under paragraphs 13-15.

12. Any other driving of a motor vehicle on that land, except for parking within 15 yards of a road or for life saving, fire extinguishment or other emergency, can also be dealt with under paragraphs 13-15.

13. The activities in paragraphs 11 and 12 are unlawful under s34 of the Road Traffic Act 1988. Therefore any member of the public who is reasonably satisfied that the owner has not authorised it (and preferably has confirmation from the owner to that effect) could report the activities to the police and ask them to take appropriate action.

14. Such action could, perhaps, be prosecution of the offender, after warning against repetition has had no effect.

15. The complainant should be prepared to be a witness in support, and the owner may also have to provide a witness if the defendant claims he has been given permission. If the offence is proved, there is a maximum fine at level 3 on the standard scale, under **Schedule 2 to the Road Traffic Offenders Act 1988**, but it is not subject to disqualification, endorsement or penalty points.

16. If a rider or driver has caused damage to the land or anything on it, intentionally or recklessly, he could also be prosecuted under the **Criminal Damage Act 1971**.

17. The **Criminal Justice and Public Order Act 1994** contains two forms of remedy as follows.

18. **Under s61**, where two or more persons have been asked by the legitimate occupier of the land to move but they

refuse and have caused damage or have threatened or been abusive to the occupier or his family, employees or agents, or they have six or more vehicles on the land, the police can direct them to leave and to remove their vehicles and other property. Failure to do so is an offence.

19. ó Occupierô means the owner in possession and where the land is a registered common (class c above)ð but not a town or village green (class a)ð it includes the commoners and the local authority, including a parish or community council. The latter can call the police under this section, in relation to any open space if they are the owner in possession.

20. **Under s77**, a local authority (other than a parish or community council) can direct a person living in a vehicle (including a caravan) on a highway, unoccupied land or (with the consent of the owner in possession) occupied land, to leave the land and remove their vehicles and other property. Failure to do so is an offence.

21. It is not necessary here to go into further details on how to prosecute offenders under this act.

22. Parking, from the legal point of view, can most easily be dealt with under paragraph 10 above, or where it can be proved that it was more than 15 yards from a road, under paragraphs 10-13 above. However, the problem has other implications, and these with other possible solutions are considered below.

23. **Parking in connection with the recreational use of the open space**. While this should be avoided where possible, it is a legitimate use provided there is no alternative site available off the land and it is properly planned and managed. The amount of space required,

its siting, treatment and landscaping, will need to be considered by the owner and the local planning authority. (Even if these are the same body, it will be different departments and a special planning procedure is involved.) There should be full consultation with the local residents and their amenity organisations.

24. **Parking by local residents and shopkeepers and their visitors, employees and customers**. This is not a legitimate use of any open space land, and it is unlawful in many cases and cannot be made lawful by being given planning permission. But this is the most difficult category of parking to deal with if you wish to avoid making enemies of your neighbours. Nevertheless, an alternative site or sites must be found. Offenders should be reminded that they set a bad example to the even more undesirable outsiders mentioned below.

25. **Parking in connection with the use of local establishments which seek to attract visitors**, some more honourably than others (eg places of entertainment, clubs, public houses, restaurants, churches, museums, art galleries, libraries) in older premises without their own adequate parking space.

26. This must be opposed, but for occasional functions which are not likely to interfere with the proper use of the open space. In such a case, its owner may give special permission subject to appropriate conditions. Such a use must be for less than 28 days a year or planning permission is necessary.

27. Sunday markets, car-boot sales, etc should always be opposed.

28. **Parking by commuters coming from outside the area**. This must be resolutely prevented.

General

29. The owner or local council should erect notices forbidding driving or parking on the land. The by-laws should be displayed at the most important points. Where the land is normally left unenclosedð particularly in the case of commons and town and village greens, whose natural open character must be preservedð bollards (removable where access by certain vehicles must be allowed), a low, white rope or chain, or whitened stones or kerbing should be placed along the edge of the land at the critical points where access is easiest as a deterrent to parking.

30. If these obstructions are to be placed on town or village greens or common land (class a or c above) where there were commonable rights on 1 January 1926, the consent of the Secretary of State in England under **s38 of the Commons Act 2006** (see information sheet C2E) or the National Assembly for Wales will be required under **s194 of the Law of Property Act 1925**. (See Information Sheet C2W.)

31. In the case of unlawful driving or parking on town or village greens or recreation allotments (class a or b above), particularly where no by-laws have been made under other legislation, the following apply. Under **s12 of the Inclosure Act 1857**, as amended by **s29 of the Commons Act 1876**, the parish or community council (or if there is not one of these the district or borough council) or any inhabitant of the parish can lay an information before the magistratesôcourt against any person wilfully doing anything against the land or interrupting its use and enjoyment for exercise and recreation. The maximum fine is at scale 1 on the standard scale.

32. A common problem is the creation of a new, private

vehicular accessway across the open space, or alteration or improvement of an existing private right of way, for the benefit of adjoining private property, or the enlargement of the amount of use of such an accessway.

33. Particularly in the case of town or village greens or commons (class a or c) there may be adjoining properties whose only access to a public road is over an old private track or roadway, often still unpaved, across the green or common.

34. In relation to greens and recreation allotments (class a or b) it has been unlawful to grant new rights of this nature since the passing of the Commons Act 1876.

35. Commons and other open spaces in public or charitable ownership (class c or d) are often subject to similar statutory trusts which prevent new or additional private rights being granted, and therefore are usually unobtainable by prescription (ie long use).

36. No new roadway could have been lawfully made or altered over a green or common (class a or c) subject to commonable rights on 1 January 1926 unless consent was given under s194 of the Law of Property Act 1925 (now s38 of the Commons Act 2006). (See Information Sheet C2E or C2W.)

37. It is therefore necessary to ensure that adjoining owners do not make any new encroachments of this nature, or any alternations or improvements to the existing track. They cannot be allowed to develop adjoining property in a manner which would require increased use of the existing right of way, unless they are able to obtain compulsory powers. Even without a public trust, the owner of the open space would wish to control the situation to protect his private property rights.

38. All proposals of this nature will require planning permission, and the advertisement of the planning application (or, if the planning authority is owner of the open space, its receipt of the application) is likely to be the first that is heard of the proposal. It is therefore necessary for all interested persons to be alert to the possible effect on the open space and its enjoyment.

39. Residents are advised to object to the proposals at this stage, and to ensure that the adjoining owner concerned, or any prospective developer or purchaser of the adjoining property, is aware of the hurdles awaiting him even if there may be insufficient grounds for refusing the planning application.

40. If possible a prospective developer should try to obtain access to the adjoining land from a different direction so that the existing track across the open space can be eliminated altogether or kept for emergency access only.

41. If an adjoining owner attempts to carry out works on the open space or to increase the use of a right of way without permission, the owner of the open space should take immediate steps to seek an injunction and restoration.

42. In the case of a town or village green or recreation allotment (class a or b), the encroachment on or interference with the enjoyment of the green is deemed under **s29 of the Commons Act 1876**, to be a public nuisance, and action against it can be taken (by the Attorney-General) under **s30 of that Act** in the County Court, with a right of appeal by either party to the Court of Appeal. NB It is not a statutory nuisance within the meaning of s79 of the Environmental Protection Act 1990.

43. Unless an adjoining owner has compulsory powers and intends to use them, the owner of the open space held on statutory trusts will usually have no power to grant an easement for additional rights over the open space for private purposes.

44. Occasionally it may be considered that an increased or improved facility on an open space can be allowed without it causing interference with the public enjoyment or use of the open space or the preservation of its natural beauty. This could only be permitted by the owner of the open space under a determinable licence on appropriate conditions.

How you can help

45. Prosecution is not easy, and where the case is strongly disputed by the alleged offender it can be lengthy and often adjourned, especially if the magistrates are busy with what they consider to be more serious cases.

46. If the particular issue is proved, the fine may be derisory and not very discouraging to repetitions of the offence. It is only worthwhile if the magistrates impose full costs. They will not do so if they feel there was any weakness in the way the prosecution was handled; or if it might have been avoided altogether if the open space owner had done more to prevent the incident by securing the land against such trespass more efficiently; or as local authority, by seeking alternative parking arrangements more strenuously.

47. We have made suggestions earlier on these aspects and stress their importance.

48. But where the only remaining option is to take someone to court for what others may consider to be minor offences (unless actual danger is caused), it is imperative to be fully prepared with all necessary evidence for the prosecution. Even if the prosecutor is a local authority (especially so if it is the parish or community council) much assistance can be given by those who actually suffer.

49. This applies to the more serious action that may be necessary against possible increased use or alternations of existing private rights of way.

a. Be certain about the status and ownership of the affected land. It will affect all proceedings, but to a lesser extent where they are under s34 of the Road Traffic Act 1988. The solicitor acting for the prosecutor will advise on the proof that may be required.

b. Take photographs and make written reports (with days of the week, dates and times) of the incidents complained about; any damageð including rutting of the groundð caused; and the interference with the proper use of the open space at the time, or which may be caused consequentially. These should be vouched for by another witness.

c. Try to identify or describe fully the alleged offenders and their vehicles, but do nothing which may endanger or lead to threats against you or any companion. Only the police or the prosecuting solicitor will be able to obtain information from the vehicle registration number.

d. Keep a record of the expenses incurred in obtaining the necessary information from the vehicle registration number.

e. Search for alternative parking sites where this is an issue. Do not consider only sites which might be available for immediate use. Could land used for a different purpose be better adapted and used for parking? Remember that this will need the co-operation of the owner and present occupier of that land, the obtaining of planning permission; and for the council (if not already the owner) or someone else to be prepared to pay for the site (by purchase or rent). It is particularly important not to antagonise a private owner or occupier with premature publicised comments about the suggested site. They should be consulted diplomatically if the matter is to be raised at parish or community council or similar meeting which may be reported by the local media.

f. Initiate or take part in discussions on how to stop vehicles entering the open space without affecting its appearance or use.

g. Keep watch on existing private drives or roadways crossing the open space to ensure that they are not missed and that no work is done to them without the appropriate consents being obtained. Ordinary maintenance is acceptable as long as the materials used do not alter the character or level of the track in relation to the adjoining land.

Please note that section 68 of the Countryside and Rights of Way Act 2000 (CROW Act) has been repealed by section 51 of the Commons Act 2006. Section 68 of the CROW Act allowed vehicular access across common land in certain circumstances. However no sooner had this section come into force than the House of Lords ruling, in *Bakewell Management Ltd* v *Brandwood and others* [2004] UKHL14, appeared to overrule it. The effect of the case is explained in *Our Common Land* (Clayden, OSS, sixth edition, 2007). In summary, it means that many people

can now claim a right of vehicular access over common land through prescription (ie 20 years use without being stopped, without being secretive and without using force). Further advice from the Department for Environment, Food and Rural Affairs is now available on their website Department for Environment, Food & Rural Affairs - GOV.UK and from the National Assembly for Wales is awaited.

The Open Spaces Society has endeavoured to state the law correctly but is unable to accept liability for any misinterpretation of the law or any other error or omission in the advice in this paper. The local Clerk to the Justices will usually give informal advice on how to proceed. In any particular case it may be sensible to seek the advice and assistance of a local solicitor.