

Open Space

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*** Registering commons * Our open day
in Aldbury * Path change and expediency**

Open Space

THE MAGAZINE OF THE
OPEN SPACES SOCIETY



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COVER STORY

Our vice-president Richard Mabey points to the route taken by the navvies from Tring Station in 1866, when they felled the illegal fencing erected by Lord Brownlow near this spot on Berkhamsted Common, Hertfordshire. The walk was part of our open day at Aldbury on 15 August (see page 8). Photo: Kate Ashbrook.

Inclosure goes on

The process of parliamentary inclosure which began in the eighteenth century has savaged the common land of England and Wales.

Now Barry Sheerman MP (Labour, Huddersfield) is attempting to right some of those wrongs, with his Common Land and Repeal of Inclosure Acts Bill, the purpose of which is 'to reinstate rights of common and to reopen common land; to repeal the Inclosure Acts; and for connected purposes'.

Splendid

Sadly his bill will not progress far, but the aim is splendid and we must find ways to reclaim those thousands of acres of lost commons.

The Commons Act 2006 enables us to apply to register commons which slipped under the net of the Commons Registration Act 1965, as explained by Hugh Craddock (pages 2–4). Researcher Steve Byrne estimates that there could be half a million acres of common land in England and Wales which are eligible for re-registration.

Inclosure still goes on. We were disappointed by the Secretary of State for Environment's recent decision, following a public inquiry, to erect fencing around Hartlebury Common in Worcestershire, where we believe that the ambience and public enjoyment

were sacrificed to the interests of habitat conservation.

Commoners are applying to retain a four-and-a-half-mile fence, marching across the Brecon Beacons National Park. It was erected as an emergency measure during the foot-and-mouth outbreak in 2001 and was never removed. We have urged the Welsh Assembly Government to get rid of the fence and instead to put money into shepherding, but with no success.

Nibbled away

Commons are nibbled away insidiously. We are opposing plans for a plant nursery which include making a driveway over Furze Common at Barsham in Suffolk. The planning application does not mention the effect on common land but, as the member who alerted us says: 'We are in the midst of a prairie; commons are the only bit of wild Suffolk left'.

And a few miles away, North Norfolk District Council last year granted planning permission for a toilet block and 22 static caravans on Upper Sheringham Common—but we have yet to receive an application for consent for common-land works there.

Last year, we wrote to all planning authorities urging them to take account of commons and greens in considering planning applications, and to inform the applicant of his legal obligations, but with little effect.

In 1866 we took direct action by employing navvies (page 8) to fell unlawful fencing. Perhaps we should again.

KJA



Getting commons registered

Part 1 of the Commons Act 2006 is already in force in seven pilot areas of England. It affords the first opportunity in 40 years to review the registers of common land and town or village greens drawn up under the Commons Registration Act 1965. Hugh Craddock, head of common land registration and protection at the Department for Environment, Food and Rural Affairs, explains how you can get involved.

Most members will be familiar with the society's origins in protecting common land from exploitation by landowners eager to accommodate the relentless urbanisation of Victorian England. Many will know of the role of the society in promoting the registration of village greens, and its guidance to potential applicants, *Getting Greens Registered*. But how many have ever registered a new common?

Window

More than 40 years ago, a few doughty individuals, some of them supported by the Ramblers, some by the society, provisionally registered many areas of common land and green during the three-year window conferred by the Commons Registration Act 1965. Many of those registrations were confirmed, and such commons remain protected to this day. Equally, many were not. In some cases the claims could not stand up to scrutiny. However others were

withdrawn in the face of hostility from landowners (and sometimes graziers), or were rejected because of legal interpretations which went unchallenged until it was too late. And that was the end of the matter, until now.

Part 1 of the Commons Act 2006 seeks to update the commons registers, catching up on 40 years of neglect. But it's not just about capturing changes to rights of common and deregistering wrongly-registered cottages. It also affords an opportunity to put right some of the injustices wrought by the 1965 act. Initially at least, part 1 has been implemented in seven pilot registration areas: Blackburn with Darwen, Cornwall, Devon (but not Plymouth or Torbay), Herefordshire, Hertfordshire, Kent (not Medway) and Lancashire (not Blackpool).

Ten actions to take in a pilot area

It's not yet possible to take action throughout England: national roll-out is programmed for 2010–12. So what can you do in one of the pilot areas?

- *Voluntarily register a green:* some traditional greens were never registered, but are owned by the parish council; others have been established with lottery funds but could not be registered at the time. Approach the council or trustees, and propose a voluntary application for registration under section 15(8): it's quick and easy for a landowner, it's free, and registration confers the greatest possible protection.
- *Register a statutory common:* some commons are managed by the local authority through a scheme made under the Commons Act 1899, or are regulated by a local act, but were not registered under the 1965 act. Such commons are vulnerable because non-registration leaves them with uncertain status, they are seldom mapped as access land on Ordnance Survey maps, and may have weaker controls over works which interfere with access. Anyone can apply to register under paragraph 2 of schedule 2, if they can produce the statutory evidence.

- *Become a commoner*: section 6 enables the landowner to grant new rights of common over an existing common. If a local common was registered without rights of common, ask the owner to grant new rights, so that the community has a direct interest in the management of the common. Rights must be attached to other land in the locality (and are exercisable by the owner or occupier of that land): the rectory or the village hall could be candidates. A right need be no more than to graze one goose!
- *Turn a development to advantage*: most new road schemes and other developments affecting common land or greens have to provide exchange land, to replace that which is lost to the development. The exchange should be registered by the developer, but sometimes it's overlooked. Anyone can apply under paragraph 2 of schedule 3 to register an exchange, but the applicant must be able to produce details of the exchange and evidence that it has taken place: this information may be available from the developer under the Environmental Information Regulations 2004—or you could press the developer to undertake this work himself.
- *Revisit a 'Box Hill' common*: some provisional registrations of common land were cancelled by the commons commissioner in line with the *Box Hill* case, because the land was no longer owned by the lord of the manor. The *Hazeley Heath* challenge reversed the earlier judgment, but 12 years too late. Use the website of researcher Steve Byrne at www.commonsreregistration.org.uk to identify cases where provisional registrations were cancelled because of the misjudged *Box Hill* ruling, and consider an application to register under paragraph 4 of schedule 2. Eligible land must still be open, uncultivated and unoccupied, and manorial in origin.
- *Call a green a green*: Lots of greens were registered as common land. Registration as a green confers greater protection against abuse, and confirms local people's right of use for sports and pastimes. You can apply under paragraph 5 of schedule 2 to transfer land from the common land register to the greens register if you can show it was a green at the date of provisional registration. It will be more straightforward if the green was allotted under an inclosure award, because proving evidence of use in the 1940s to 1960s will be much more demanding. Better still, encourage the owner to apply voluntarily under section 15(8).
- *Register an allotment*: some public parks and other lands allotted for recreation under inclosure awards were never registered as greens (or as common land). Paragraph 3 of schedule 2 now enables anyone to apply to register such land, if they can produce evidence of the award.
- *Rescind a withdrawal*: many applicants for provisional registration under the 1965 Act felt pressured to withdraw their applications. Most withdrawn cases can now be revisited. Try to find out why the application was withdrawn: if it didn't stand up at the time, then it's not worth resurrecting it now. Use Steve Byrne's website to help you find out the history, and decide if the land is still waste of the manor—see *Revisit a 'Box Hill' common* above.
- *Get the boundary redrawn*: common and green boundaries aren't always properly mapped in the registers. Sometimes bits were left out. Compare the registered boundaries with what's apparent on the ground and in historic documents (such as inclosure awards or deeds under section 193 of the Law of Property Act 1925). Ask the registration authority if you want to see the original application form and plan. You may be able to apply to correct errors in the boundary. If the mistake was made by the authority (eg in wrongly interpreting the application map) you can apply under section 19, otherwise you may be able to apply under paragraph 2, 3 or 4 of schedule 2.

- *Two registers are better than one:* persuade green and common owners to register their ownership in the Land Registry's register of title (this is entirely separate from the commons registers). Registration of title gives much better long-term protection against encroachment, and there is a reduction in fee for voluntary registration. A parish council can lose title to a village green by adverse possession: that won't affect the status of the land as green, but why let it happen unnecessarily?

Find out about making an application from Defra at www.defra.gov.uk/wildlife-countryside/protected-areas/commonland/, from the society at www.oss.org.uk and from www.commonsgeregistration.org.uk.

Downsides

What are the downsides? Well, in some cases, there may be opposition from landowners, or from other local people if you fail fully to explain why you're taking action. If you make an application under schedule 2, and it goes to a public inquiry, you could be liable for costs, but only if

you act unreasonably (on much the same basis as costs in relation to rights-of-way orders). And proving your case may be difficult where historical evidence is needed from over 40 years ago.

If you succeed, you could help secure protection for, and access to, land in perpetuity, perhaps reversing some of the mistakes of the 1965 act. Alternatively, in most cases, your registration authority can take the initiative, by making a proposal to amend the register if the result would be in the public interest. Why not research the background, and ask the authority to act?

Candidates

Even if you're not in one of the pilot areas, it's not too soon to start researching candidates for action. In some cases, you can act now: for example, to register an exchange-land scheme, to get a green voluntarily registered or to register ownership with the Land Registry. For nearly 40 years, people have been saying that we need new commons legislation, to put right the wrongs of the 1965 act: now we have it, it's time for the society to show that it means to use it. □

Sally Amos enjoying Lord Eversley's seat at Hightown Common in the New Forest, Hampshire. The seat, which was designed by Sally's aunt, the architect Elisabeth Scott, was recently restored by the National Trust. In 1929 our society raised £1,300 to buy the common, which was threatened with development, in memory of our founder Lord Eversley, and we conveyed it to the National Trust. Sally's father, Tom Longstaff, and other adjoining landowners, gave further land to increase the size of the property. Originally the seat was part of a bus-shelter by the A31 road. When this was widened in the 1960s the seat was rescued and moved to its current position. Photo: Bridget Amos.





Spurious interest

Durham County Council made an order to divert two parts of public footpath 9 at Kirkview Farm, Mickleton, six miles north-west of Barnard Castle in County Durham. Our local correspondent, Jo Bird, objected, as did Alan Kind of the Byways and Bridleways Trust. The case was determined by Sue Arnott of the Planning Inspectorate, by written representations.

The order route appears on the definitive map in two parts, A-B and C-D, because when the definitive map was produced there was an error and the two sections did not join up. This issue can only be resolved by a modification order which, the inspector, said, 'in theory at least should be undertaken before considering its diversion'. However, she felt she could determine the order as it stood, but treat the route as a continuous public right of way.

Curves

The definitive route runs north-south with some curves. The diversion is a straight route starting slightly to the west of the order route, crossing it then joining it about 300 metres to the south.

The inspector's first task was to decide whether, in the interest of the owner, it was expedient that the path should be diverted, Durham County Council having made the order in the interests of the owner primarily because the northern end passed through a

farmyard. The council also argued that the diversion meant less trampling of the haymeadow which was a 'tier 2' meadow in the Pennine Dales Environmentally Sensitive Area, since it ran along a mown area parallel to, but not on the edge of, the field. The applicant expressed concern about the theft of materials from, and damage to, his buildings and argued for the route to be removed from the farm complex.

Jo Bird said that the applicant's reasons were spurious. The farmhouse and buildings were not in use, and stock was rarely in the yard: photographs taken in 2007 showed grass growing in the yard. The length of path across the hayfield would be increased from 80 metres to 134 metres.

Apparent

The inspector agreed that 'the reasons for the order are not immediately apparent from the observation of the site; even when explained they are not compelling. However, I do accept that there would be *some* gain to the applicant in lessening the impact of a public right of way on farming operations even though this may be quite limited. The owners, Mr and Mrs Mitcalfe,

Helping our members

While we do our best to respond quickly to your queries, we cannot help when we are given unreasonably tight deadlines, and it's unfair on others if those who give insufficient notice jump the queue. So please give us at least two weeks' notice when the case is complex.

And where we do give help, we always appreciate a donation towards our costs. Thank you!

clearly believe there are benefits to be had from this diversion to have pursued the matter.... I am not convinced that security on the site will be significantly enhanced as a result of the diversion.... Nevertheless I recognise there would be some benefit to the landowners from the proposed realignment and that it would be expedient to divert the footpath as proposed in their

interests.’

This is a worrying conclusion. There is no evidence that the diversion was in the owners’ interests beyond that they said it was. We consider that the inspector should have required real evidence before coming to this view.

She went on to decide that the proposed new termination point was substantially as convenient to the public, the proposed diversion was not substantially less convenient to the public, and the public’s enjoyment of the path as a whole would not be detrimentally affected by the diversion.

Limitations

Alan Kind had objected because the limitations specified in the order (a gate and two stiles) should be expressly referred to as being compliant with British Standard 5709 ‘Gaps, gates and stiles’. The inspector recognised the importance of being compliant with the Disability Discrimination Act (DDA) but said that the council would have to certify the new route was in fit condition before the old route was extinguished, and it would ensure the structures were DDA-compliant. She confirmed the order. (*FPS/H1345/4/18, 13 May 2009*)

Comings and goings

Three of our local correspondents have retired: John Fawcett (Kirklees), Alan Morley (Castle Point District and Southend-on-Sea Borough, Essex) and Chris Watson (South Somerset District). We thank them for their hard work.

We welcome Chris Bloor (Bristol and South Gloucestershire), Mark Green (who has taken over the London Boroughs of Bromley, Croydon, Lambeth, Lewisham and Southwark from Bernard Selwyn), Rodney Legg (Dorset) and Paul Partington (who has taken over Taunton Deane Borough from Chris Watson).

Local correspondents respond on our behalf to any path changes in their chosen area, in accordance with our policies, and help with problems on commons, greens, open spaces and paths in their territories.

Their assistance is invaluable.

If any member is interested in becoming a local correspondent, please contact the office.

Path stops pyrotechnics

Wokingham Borough Council refused to allow two public footpaths to be closed for the fireworks display, which traditionally ends Henley Regatta in July.

The organiser, James Brennan of Hoffman’s (vintage cars) in Henley, had arranged for the event to take place on a new site, Sham Hill at Remenham, which is crossed by two popular public footpaths. However, he had failed to obtain the necessary consent to close the paths under a temporary order.

Wokingham Council considered that it was far too short notice for it to follow the necessary consultation process and therefore refused to allow the path to be closed.

Highway verges

We have called for recognition that highway verges are a vital part of our public rights-of-way network. We were responding to a consultation paper ‘A Safer Way: Making Britain’s Roads the Safest in the World’ in which the Department for Transport asked how it could reduce pedestrian casualties on roads.

We said that the verge is a part of the highway and should be available for use by walkers and riders. This would greatly

Our information sheets

We have re-priced our information sheets so that they are all free to members (though we appreciate an sae and donation) and cost £2.50 each to non-members.

increase the land available for public use and people would not be forced to use the road itself.

Too often the verges are overgrown and neglected—or even filched by adjoining property-owners, yet highway authorities have a legal duty to keep them in good order.

So we have called on the Department for

Transport to recommend to highway authorities that they clear and maintain all the verges on their rural roads.

The society has campaigned on this issue for more than 70 years. In July 1936 it published an article by its legal adviser, W R Hornby Steer MA LLB, entitled *Roadside Wastes*. Mr Hornby Steer stressed the importance of strips of roadside waste, or highway verges, for the public and the need to safeguard them from illegal attempts to enclose them. Those words are still true today.

Swansea path-closure row

We have objected to Swansea Council's order to close the public footpath over the former slip-bridge on the Swansea seafront. The order was made on the grounds that the path is not needed for public use and won't be needed in future.

But it might well be needed in future to provide a safe crossing, on a historic route, over the busy dual-carriageway Oyster-mouth Road.

There are about 150 objectors to this plan. If the path is extinguished, any hope of restoring a bridge here is dashed. The current pelican-crossing is not a suitable alternative.

Pitshill reversal

The paths at Pitshill, near Petworth in West Sussex, are to be moved after a rerun of the public inquiry in October 2007

As we explained in the last *Open Space* (page 9), the Hon Charles Pearson, who owns the magnificent but crumbling grade II* Georgian mansion, Pitshill, successfully appealed against the decision from the first inquiry and the case was reheard in June with the same inspector, Peter Millman.

But this had given Mr Pearson 20 months in which to alter the landscape to counter the points on which the inspector had originally found in our favour. So he got busy planting shrubs and trees which obscure the lovely views of the house.

The Ramblers put up a good fight, arguing against the technicalities and the merits of the two diversion and two extinguishment orders, but to no avail.



Lost view of Pitshill House. The path from which the photograph was taken has been extinguished. Photo: Kate Ashbrook.

The inspector noted the changed circumstances since the first inquiry, the new post-and-rail fencing and the beech saplings which would in time form a hedge, hiding the view. He disagreed with us that the proposed new routes were inferior, and confirmed the orders. (FPS/L3815/4/1R and 4/2R and 3/1R and 3/2R, 21 July 2009)

Structures on public paths

We have published the summary of the highway authorities' responses to our survey last year, seeking information on their policies and practices in authorising structures on public paths. This can be downloaded from our website at <http://www.oss.org.uk/wp-content/uploads/2009/08/survey-percentages-20090807.pdf> or obtained from the office.

East Sussex enforcement

Congratulations to East Sussex County Council which has cleared crops from four paths at Sessingham Farm in Arlington. The council moved in with two mini-tractors and flails to clear maize, wheat and barley from three footpaths and one bridleway.

Norton Radstock's path work

The society, through our local correspondent John Ives, has helped to secure a grant of £14,000 from the Department for Environment, Food and Rural Affairs's Aggregate Levy Sustainable Fund, to improve public rights of way around Norton Radstock and Midsomer Norton in Bath & North East Somerset.

This is an excellent initiative. □

In the steps of the navvies...



On 15 August we marked Kate Ashbrook's 25 years as general secretary—at Aldbury, Herts, close to Berkhamsted Common where in 1866 Lord Brownlow's infamous fences were torn down by navvies imported to do the deed. *Above* Chris Hall points to Tring Station where the navvies disembarked by night. *Left* Outside the village hall from left: Richard Mabey, vice-president, Kate, Rob McCarthy from the parish council, and Ruth Walker (who organised it all). *Above right* Michèle Kohler (Bantam Charitable Trust) hands Kate a £2,500 cheque for our funds, and Brent path-fighters gather on the village green. *Opposite* Richard's walk heads to the common.



...towards the stolen common

Far and wide



Our AGM

Roger de Freitas, our vice-president, chaired our well-attended AGM on 30 June. On the initiative of trustee and local correspondent Chris Beney, we amended the constitution to add the words 'and enhance' to our objects so that we are now charged to 'protect, preserve and enhance existing public paths'.

Rodney Legg stood down as chairman of the society after 20 years and Don Lee retired as a trustee after 25. The vice-chairman, Phil Wadey, spoke of the long and distinguished service by Rod and Don and the AGM thanked them warmly.

We elected two new vice-presidents: Len Clark and Tony (Lord) Greaves. Len, a long-standing member, was for many years our roving researcher on commons. He was also secretary of the Common Land Forum 1983-6. Tony is Liberal Democrat spokesman for environment, food and rural affairs in the House of Lords. With his meticulous attention to detail, he has submitted many helpful amendments to legislation on our behalf and argued doggedly for their adoption, often with success.

John Ives was elected as a new trustee. He is our local correspondent for Bath & North East Somerset and North Somerset.

Vice-chairman Phil Wadey (left) makes a presentation to retiring chairman Rodney Legg.



Hugh Craddock from the Department for Environment, Food and Rural Affairs talked about registration of commons under the Commons Act 2006 (see page 2).

After lunch, writer Paul Kingsnorth spoke on 'the modern inclosures: the corporatisation of place and the fight against it'. Copies of his talk may be obtained from the office. The day finished with a session on fund-raising, led by trustee Diane Andrewes.

Rodney retires

Rodney Legg has retired after 20 years as our chairman. Before that he was treasurer, having joined the committee in 1980. He has written numerous walks books, identified and claimed 700 acres of open country across the West Country for inclusion on the new access-maps, and he was warden of Steep Holm island in the Bristol Channel for 24 years.

He has been a member of the National Trust council since 1990, and our appointee for most of that time.

He continues his involvement with the society as our local correspondent for Dorset, a county he knows intimately.

Says Rodney: 'Now I shall be walking for a purpose by way of exercise breaks from the computer screen. Wherever I go to prepare walks for publication it becomes clear that there are difficulties with routes, plus lost rights of way that need claiming. Lots of problems are beyond the scope of my secateurs! There remains a big need for the Open Spaces Society to have an active local presence on the ground.'

New officers

The constitution adopted last year requires the trustees to elect their own officers and, at the meeting immediately after the AGM,



Jackie Warr, our new chairman.

they elected Jackie Warr as chairman and Phil Wadey as vice-chairman. The post of treasurer remains vacant, and we are fortunate to have found Jonathan Crossman who has extensive business experience. Although he does not wish to become a trustee, he gives us excellent advice, attends our finance subcommittee and trustees' meetings, and puts in a great deal of work on our behalf.

Welcome Jackie

Jackie Warr is the society's first woman chairman in our 144-year history. A solicitor from Great Bourton in north Oxfordshire, Jackie follows a long line of distinguished chairmen, including Lord Eversley, one of Gladstone's ministers, Sir John Brunner, industrialist and MP, and Cecil Harmsworth, a member of the newspaper family and also a Liberal MP.

Jackie is a keen walker and rider. Her interest in us was sparked ten years ago by a misguided attempt to turn a registered green close to her home into a car-park.

Says Jackie: 'I am extremely proud to be elected to a role with such a long line of distinguished predecessors. I shall do all I can to live up to their achievements.'

'This is a difficult time for many charities, so my priority will be to ensure the society is able to continue its essential work for many years to come.'

Branksome Rec

We are backing our member, Branksome Rec Action Group, in its campaign to save the 17-acre Branksome Rec in Poole from

development by Poole Town Football Club. The group has applied to register the land as a town green, in recognition of its long use by local people for informal recreation.

If the football club gets its way, the land will be enclosed and used solely as a football ground and the community will be deprived of a vital amenity.

Unfair exchange

The Planning Inspectorate has allowed the exchange of village green at Heartenoak Playing Field, on the north side of Hawkhurst in Kent.

The application, from Hawkhurst Parish Council and Mr Nigel Velvick of Ockley Farm, Hawkhurst, was to swap 5,300 square metres of the recently-registered village green, owned by the council, for

Shop online to help us

Our new website has a link on the home page to a shopping site, which enables the society to receive a proportion of your total payment.

Just click on the link from the home page and decide which shop to visit, click its icon and start shopping.

There's an abundance of retailers, some chosen with our members in mind, such as Amazon, the National Trust, Cotswold Outdoor, Bear Grylls, Craghopper, Hawkshead and Waterstone's.

Why not do your christmas shopping from your desk and benefit the society?

5,500 square metres of agricultural land to the north, owned by Mr Velvick. This is to allow 23 affordable homes to be built on the existing village green.

The exchange was proposed under section 147 of the Inclosure Act 1845 (now superseded by the Commons Act 2006) which requires it to be 'just and reasonable'. At the public inquiry in January the 21 opponents included the Heartenoak Residents' Association and us, represented by Chris Maile of the Campaign for Planning Sanity.

We argued that the exchange land was inferior; it is further from the village and on a slope—and the houses should not in any

case be built on a village green.

However the inspector Martin Elliott, and the Secretary of State for Environment, Food and Rural Affairs considered that the exchange was fair and reasonable. While the exchange land was more sloping, it was larger than the existing green; and, although further from the village, it would be linked to the village by a new footway. They have therefore allowed the exchange.

It is thanks to Hearten Oak Residents' Association that the land was registered as a green in the first place. This meant that exchange land had to be provided. Otherwise the community would have lost its green with nothing to replace it. (*CLI 420, 15 July 2009*)

Windmill win

Surrey County Council has registered land at Windmill Drive, Leatherhead, as a town green. It is a field with mature trees, on the south side of town which has been used for many years by local people for informal recreation. The application was submitted to the council by Ken Dodge, who took it over from the late John Stapleton. Unusually, there were no objections.

The land was not under immediate threat but, because its ownership was unknown, it was at risk of development. Now it is safe. This shows the benefit of registering land before it is threatened.

Voluntary greens

Talacre Gardens in the London Borough of Camden is owned by the council, which has voluntarily agreed to register it as a green. This followed a two-year campaign by our

Memorial seat to John Stapleton on Windmill Hill green in Leatherhead.



Talacre Gardens green, Camden.

member, the Friends of Talacre Gardens.

The green is important for local people: it is the only open space available for the nearby residents, many of whom have no gardens of their own.

And in our home town of Henley-on-Thames, the town council (also a member) has registered an open space, Gillotts Field, which was threatened with housing.

Newpool Meadows

Staffordshire County Council has agreed to register nine acres at Newpool Meadows, Knypersley on the south side of Biddulph, as a town green.

This open space is an important natural habitat with an abundance of wildlife, to the west of the A527 Tunstall Road. It has long been enjoyed by local people, but was also threatened with housing development.

The registration application was submitted to the council by Ellen Faulkner of the Newpool Meadows Action Group, a member of the society, in 2006. Both the landowners, Staffordshire County Council and Staffordshire Moorlands District Council, objected.

A public inquiry was held last year at which the applicant was supported by Chris Maile of the Campaign for Planning Sanity. The inspector, Lana Wood, recommended that the land be registered.

Wish comes true?

Barbara Clark, our member at Brixham, is delighted that a public-inquiry inspector has recommended Torbay Council to register the three-acre Wishings Field as a green.

The inspector, land-law barrister William

Webster, recommended that the land should be registered, in the face of objections from the landowner, Mudstone LLP, one of whose partners is the TV Dragons' Den judge Deborah Meaden. The objectors argued that the land had been used as an informal recreation area for guests of a nearby holiday park, and that the public had been turned off, but the inspector found some of their evidence to be 'unreliable' and 'inherently implausible'.

Planning permission had been granted for 48 houses, but will they now be built?

South Wales spaces

Recently, we have assisted our members in their efforts to save a number of open spaces in south Wales.

Rhondda Cynon Taf Council has registered a green at the old Hirwaun ironworks, four miles north-west of Aberdare. The site is a mixture of open grassland, trees and shrubs with the River Cynon flowing through it.

In 2008 planning permission was granted to Piper Homes to build 130 houses here. The application to register the land was

Thank you!

We are grateful to members who have generously donated to our appeals. We are delighted that our spring appeal to save spaces and paths has raised £15,000, while the general secretary's 25th anniversary appeal has raised £10,500. Times are hard for everyone and we really appreciate your support.

made by our member Christopher Bond of Action for Hirwaun and following a public inquiry, the inspector, Anthony Porten QC, recommended that the land be registered.

Meanwhile our member the Merton Green Action Group has submitted its application to Monmouthshire County Council to register land at Merton Green and Ash Tree Road in Caerwent. This open grassland belonged to the Ministry of Defence and was sold to the council and then to Barratt Homes, which has planning permission for 145 houses there.

And in east Cardiff, we have given our

support to the Rumney Recreation and Eastern Leisure Centre (RREEL) Action Group, which is fighting a decision by Cardiff City Council to build a new school on parkland known as Rumney Recreation Ground.

Trethomas campaign

Thanks to pressure from the society, Caerphilly County Borough Council is at last moving on the application submitted by Trethomas Conservation Group more than 18 months ago, to register council-owned land opposite Upper Glyn Gwyn Street, Trethomas, as a green. The application is backed by Bedwas, Trethomas and Machan Community Council, Wayne David MP and Jeff Cuthbert AM.

In support of our member Billy Hughes, we wrote to the council three times to ask what progress it was making with the application, but received no reply. In desperation we submitted a formal complaint and at last the head of legal services has replied, suggesting that the applicants amend the boundaries of the claimed green. They are considering this.

There is a proposal to build a road across the land in connection with redevelopment of the old Bedwas Colliery site. So the matter is urgent.

Beverley for the trust

We are delighted to have selected Beverley Penney as our appointee on the National Trust council, to replace Rodney Legg who retires at the end of the year after 20 years' service.

Beverley worked for the Ramblers for 27 years, for most of them as director of Ramblers Cymru, and she has had considerable involvement with the National Trust. She has long been a member of the society and was a trustee during the 1980s. She will be an excellent advocate for us.

Beechcroft space saved

Open space at Beechcroft Manor, Weybridge in Surrey, has been saved after Elmbridge Borough Council's planning committee unanimously rejected an application for a block of three houses

there. We had objected.

The proposed development would have damaged not only the much-used Beechcroft Manor open space, but also its landscape setting, which includes the Templemere historic woodland and the lovely Broad Water lake.

David Culver-Williams

We have received a wonderful legacy of £175,000 from the estate of the late David Culver-Williams. David, who died aged 77, was for 28 years a member of Lymington

Email addresses

We are keen to communicate with members by email where possible, to save postage costs. If you haven't already told us your email address, please do so by sending an email to ruthwalker@oss.org.uk. Also, please let us know if you would prefer to have *Open Space* sent to you by email as a pdf, rather than a paper copy, saving us money. Many thanks.

and Pennington Town Council in Hampshire, a long-standing member of the society.

Martina Humber, a former mayor of Lymington and Pennington, spoke at David's funeral. She said that David was a dedicated councillor and, up until a few years ago, he attended fortnightly planning meetings. His knowledge of the local environment was second to none. He was responsible for the footpaths, walking them regularly and reporting problems to the county council. He was made an honorary burgess.

David loved nature and in particular Pennington Common, which he ensured was cared for as a site of special scientific interest. He often talked about the orchids, glow-worms and nightingales there.

He was a source of sound advice and his knowledge of local history was welcomed by new councillors. He was adamant that the burgrave plots behind the High Street shops should be protected, and his vision helped to secure the nationally-important St Barbe Museum in Lymington.

David's brother, Barrie Williams, died

shortly after him and, as the residue of his estate had been left to his brother, we have benefited from that as well.

More legacies

James Young, a member of the society for more than 50 years, has died, leaving us £5,000. He lived in Derby and used to love roaming the Peak District.

We have also received a further £43,000 from the estate of Edwin Walker who, in 2007, left us £100,000 (os autumn 2008 page 12).

Such legacies make all the difference to us. Please consider leaving us a gift in your will.

Serendipity

This summer Roger de Freitas, our vice-president, undertook a 180-mile walk around the Kent coast. Early one Sunday afternoon he came across a Lydd Town Council noticeboard on the beach. There was displayed the latest council agenda and, being an inveterate reader of notices, Roger discovered that item 13 was 'Consideration of proposal to join the Open Spaces Society'.

We are delighted that the decision was in the affirmative and the council has now joined us. ☐

Become a Friend

We have enclosed a flyer from the Campaign for National Parks (CNP) with this issue of *Open Space*. CNP will be distributing our leaflet to its members in the spring. Such reciprocal mailings are a good way for us to reach new audiences at minimal cost.

CNP is the only national voluntary organisation campaigning to protect and enhance the national parks of England and Wales. Its recent successes include stopping two wind-turbines in the South Downs and the abandonment of the Mottram-Tintwistle bypass inquiry in the Peak District National Park. We work closely with CNP as a member of its council.

You can join as a Friend and help to protect those beautiful places for ever.



The meaning of 'expedient'

As a new local correspondent, I have put some effort into trying to understand the phrase 'in the interests of the owner...', it is expedient that' (from section 119 of the Highways Act 1980, diversion of public highways). This term seemed as offensive to my understanding of the principles of English law as it did to the usages of ordinary English. Further study suggests that the term has no warrant in statute law.

The meaning of 'expedient' is the key. Dictionaries are useless in this case as they provide contradictory meanings. So we have to rely on the context in which we find the offending term in the Highways Act.

There are two important features of this legislation.

Consolidation

Firstly, the Highways Act 1980 is a consolidation act. That means that it is not a piece of radical Thatcherite legislation from the early days of that government, but a tidying-up exercise designed to gather previous enactments into a convenient package.

Secondly, section 119 takes the form of enabling legislation, which gives powers to local councils that had formerly been exercised by parliament.

Enabling legislation is the natural habitat of the word 'expedient'. Its meaning is clear from The Enabling Act—the Church

of England Assembly (Powers) Act 1919, which devolved some of parliament's powers to legislate onto a Church Council—now known as the General Synod. Because the legislators were antidisestablishmentarians, powers of oversight were reserved to an Ecclesiastical Committee of Parliament (ECP), consisting of 30 members, half from the Commons and half from the Lords. The function of the ECP is to determine whether the measures proposed by the Church Council are 'expedient' having particular regard to constitutional matters.

To understand the meaning of 'expedient' in this context, we need to consider what other terms might have been used. Obviously no consideration of ethics or theology could be appropriately weighed against the deliberations of the Church Council. The term 'lawful' was ruled out because 'measures', once signed and sealed by the monarch, have the force of law. So, the term 'expedient' was used, because it encapsulates the political function of parliament. The proper meaning of 'expedient' in this context leaps out from the list of possible meanings in the *Shorter Oxford Dictionary*—it is 'politic'.

Politic

To those of us who are not politicians, the word 'politic' has a dubious ring, but to those who exercise democratic oversight it describes a noble calling. When councils change the route of a public path, they are acting in place of parliament. It is our duty to demand that they act as politicians, when they do so, and set out the policy that their officials must follow in section 119 cases, instead of allowing themselves to be bullied into acting as advocates for individuals.

It is easy to see how the prevailing understanding of the term 'in the interests of the owner...', it is expedient' might have come about through advice offered by barristers, but such advice can only have arisen from an understanding of 'expedient' based on the professional ethics of the legal fraternity, because it has no basis in statute.

Chris Bloor
Bristol



A new book on open spaces

The Law of Parks and Open Spaces by Paul Clayden (Shaw & Sons, £24.95) is a valuable complement to the society's *Our Common Land* also by Paul. It is a book of similar size usefully and clearly covering the history and complicated law of most of the public open spaces which are not commons or town or village greens.

However, there is little overlap between them. The new book does not even mention the existence of the commons legislation nor indicate that information on this can be found elsewhere. Yet those in local government who manage these areas will need both books to deal with their responsibilities adequately.

Legal differences

Most town residents, their councillors and council administrators, are ignorant of the legal differences between the various types of open spaces. Unless the names include 'common' they might all be called parks and, even then, many believe they can all be treated alike. Paul should, therefore, combine his expertise in the two books in a single work, to become the next edition of both, perhaps to include other recreational open space such as country parks.

Nevertheless, there is much of value in the present book and, the more copies purchased quickly, the sooner can be produced an improved version!

Bernard Selwyn

An Archaeology of Town Commons in England by Mark Bowden, Graham Brown and Nicky Smith (English Heritage, £17.99) is offered to OSS members at the special rate of £15.29. Copies may be ordered from Central Books, 99 Wallis Road, London E19 5LN tel 0845 4589912 or eh@centralbooks.com. Please quote 'oss' to qualify for the 15 per cent discount.

This is a fascinating study of town commons, explaining clearly what commons are, the land before there were any commons, and the many different activities which take place there, in the past and now, from military training to horse-racing, festivals and political rallies. It is nicely set out with good pictures.

The River Hamble, a history by David Chun (Phillimore, £16.99) is a well-researched history of this river which runs from Bishop's Waltham in Hampshire to Southampton Water. David contributed to our information sheet on the subject of 'hards', or public-landing places, of which there are a number on the Hamble.

Who owns Sparsholt—a townie's guide to what's happening on the land by Edmund Bush (£10.99 from E H Bush, Rudgwick, Woodman Lane, Sparsholt, Winchester SO21 2NS). Eddie, who is a keen member of the society, writes in detail about his home parish, and its landowners, with a chapter on public access.

Vanguard Way Guide (free download from www.vanguardway.org.uk) describes in ten easy sections the route which runs for 66 miles, from Croydon to Newhaven in East Sussex, passing through the designated South Downs National Park and two areas of outstanding natural beauty. There is also a downloadable companion about public transport and facilities en route. This is all very different from the traditional guidebook, but the way of things to come.

The way was devised by the Vanguards, a group of walkers who used to meet regularly for rail rambles and ended up after one trip, in 1965, in the guard's van, hence their name.

KA

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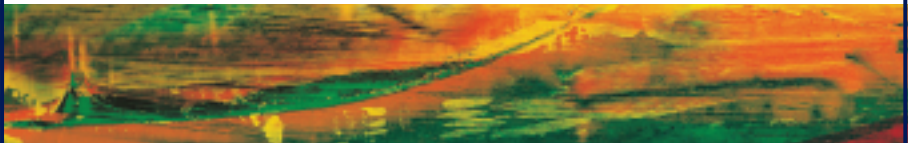
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Venture Court
Valley Way, Enterprise Park
Swansea SA6 8QP

T: 01792 773773
F: 01792 774775
E: law@johncollins.co.uk
W: www.jcpsolicitors.co.uk

JCP John Collins & Partners LLP
Solicitors



25A BELL STREET HENLEY-ON-THAMES OXON RG9 2BA
Tel: (01491) 573535 Email: hq@oss.org.uk Web: www.oss.org.uk

The Open Spaces Society, formally the Commons, Open Spaces and Footpaths Preservation Society, was founded in 1865 and is Britain's oldest national conservation body. We campaign to protect common land, village greens, open spaces and public paths, and your right to enjoy them. We advise local authorities and the public, and we manage and preserve open spaces which we acquire by gift or purchase. As a registered charity (214753) we rely on voluntary support from subscriptions, donations and legacies.

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