

Open Space

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* Reviewing greens * Crystal Palace
Park campaign * In whose interests?



Open Space

THE MAGAZINE OF THE
OPEN SPACES SOCIETY



Opinion	1
Crystal Palace Park campaign	2
Taking action	4
The fence must go	5
Far and wide	6
Dennis Nisbet	10
Path issues	11
Marjorie Kerr	15
Reviews	16

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COVER STORY

The unlawful fence marches up hill and down dale in the heart of the Brecon Beacons National Park. It was erected, as an emergency measure, by the Department for Environment, Food and Rural Affairs during foot and mouth in 2001 and should have been removed three years ago. We are pressing for it to go (see page 5). Photo: Siôn Brackenbury.

Rants on the green

‘Nimbys are exploiting a nineteenth-century law to block attempts to build new homes in their village’.

This rant comes from the National Housing Federation (representing housing associations). But what the NHF and others ignore is that registration of land as a green merely *records* recreation rights that already exist; it does not *create* a green.

Greens are protected from development—which is only proper when such land has been freely enjoyed by the public for at least 20 years.

Critics

The critics claim that people are claiming inappropriate land, such as a former industrial site. But how can they know? Such sites, however improbable they may appear, are treasured by local people and may well be eligible for registration. Many applications are endorsed by parish councils.

Last year the Department for Environment, Food and Rural Affairs (Defra) commissioned research to analyse applications for greens from 2004-9 (see page 4). Defra said it would consider changes to the process if the research showed this to be necessary—but it patently does not.

The research shows that over half the applications for new greens were not driven by proposals in the local

plan or planning applications for development of the site. Just under half were on land where planning applications had been submitted or there were development pressures nearby, but there was no evidence that the application was linked to those plans.

Of course, when much-loved land is threatened, people want to save it. If they have used it for recreation they want to record those rights and secure the land as a green. Such applications are genuine, and are not being made purely to thwart development.

Pilot

The amended law has only been operating since April 2007, with even newer processes being tested in seven pilot areas since October 2008—where there have been too few applications to draw conclusions.

Nevertheless, Defra has decided to consult on whether there is a need to reform the system.

The answer is not to review the law, which is working well, but to amend and clarify the guidance so as to require registration authorities to throw out groundless applications and process meritorious ones speedily, with time limits at every stage and a public inquiry only when necessary.

And there should be early discussions between all with an interest in the land to see if an amicable solution can be achieved.

Defra’s review must be confined to the real issues and must not be diverted by developers’ rants.

KJA

Crystal Palace Park campaign

Mark Green, our local correspondent for south London, represented us at the public inquiry last year into damaging plans for Crystal Palace Park in the London Borough of Bromley. Mark tells the story.

Crystal Palace Park is one of the country's oldest and grandest public parks. Over the years it has been the focus of many controversies. Last year's public inquiry raises important issues about disposal of metropolitan open space for development.

Protracted

Readers may recall the protracted battle in the 1990s over Bromley Council's plans for a leisure complex on the site of Paxton's Crystal Palace. These eventually came to nothing when the commercial developers promoting the scheme dropped it. The London Development Agency (LDA) then stepped in with an ambitious 'Crystal Palace Park Masterplan' that envisaged regenerating the park as a 'metropolitan park, heritage asset, cultural, leisure, educational and recreational resource

for the 21st century'. Among the features of the new park would have been glasshouses and a treetop walk. The total cost of the project was estimated to be around £70 million.

Sale

In 2008 the LDA submitted a planning application that included the sale of parkland for a private housing development to help fund its proposals. The application was called in and a public inquiry held from July to September 2009.

The main opposition to the proposals at the public inquiry came from the Crystal Palace Community Association (CPCA). Experts called by the CPCA raised, among other issues, the weakness of the business case for the LDA's proposals, the loss of trees and damage to wildlife in the park.

We opposed the LDA's application and I appeared at the inquiry, before the inspector, Mr Alan Novitzky.

The most important issue for us was that as Metropolitan Open Land Crystal Palace Park was supposed to be protected from development. The LDA

Crystal Palace Park upper terrace. Photos: Mark Green.





Crystal Palace Park dinosaurs.

cited 'very special circumstances' in this case, namely that the development would 'enable regeneration of the park and the wider benefits that this would bring'. We challenged this assertion on two grounds.

First, the developments will only partly enable regeneration, in that the cash proceeds will only fund a fraction of the total cost of the LDA's masterplan. (It should be noted that, following Boris Johnson's replacement of Ken Livingstone as London Mayor, the LDA has made clear that it will not itself invest in the park. So it is not known where the balance of funding above and beyond the disposal proceeds is to come from.)

Second, it is not clear that the regeneration is essential to the future of the park or would offer benefits. Even if it were to benefit the park, it is hard to see that this constitutes 'very special circumstances'.

Owing to the inspector's illness, the decision is not due until the summer.

The editor adds: While Crystal Palace Park is one of our oldest parks, our representative Bernard Selwyn has been campaigning for one of the newest. The Kensington Housing Trust wants to develop Athlone Gardens, near Portobello Road, north Kensington, which are less than 30 years old, and to provide land in exchange. Bernard says: 'A newly-created park requires much longer than 30 years to come to proper maturity and, even with a full nearby replacement area, it means starting again'. Athlone Gardens were a memorial to Princess Alice, Countess of Athlone, the last surviving grandchild of Queen Victoria, who died aged 97. 'It's a poor tribute to her to build over those gardens only 30 years later,' says Bernard. □

Come to our AGM

on Tuesday 6 July 2010 at 11 am

at Friends House, 173 Euston Road, London NW1 2BJ

- If you would like to submit a motion to the AGM, it must reach us, bearing your signature, by midnight on Monday 24 May.
- If you wish to stand for election as a trustee, we need your nomination, proposed and seconded in writing by members of the society and bearing your written consent, by midnight on Monday 24 May. We currently only have six trustees for nine places.

Candidates must be individual members of the society at the closing date for nominations, Monday 24 May.

The trustees meet in London or Reading, four times a year.

If you wish to know what is involved, contact the office for an information pack: telephone 01491 573535, email hq@oss.org.uk.

Taking Action

Greens review

In the parliamentary debate on town and village greens on 25 March 2008, important principles for greens were established.

The then Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs, Jonathan Shaw, said: 'It is only right that long-standing use of land by local people for recreation should have protection in law.... However, such rights are frequently asserted only when they are threatened.... We need to acknowledge that people do not always know what is happening, despite the laudable best efforts of local authorities to advise them. The difficulty, therefore, is to distinguish the legitimate response that is intended to protect community recreational sites from the vexatious application that is intended to defer or obstruct...'.

Since then there have been many applications to register greens, the vast majority entirely honest in their intention, namely to record the customary rights of local people.

Research

We were concerned therefore when the Department for Environment, Food and Rural Affairs (Defra) announced that there would be a review of the greens-registration process. It had commissioned research from the Countryside and Community Research Institute of Gloucester University and Asken Ltd, to gather evidence about registration applications between January 2004 and March 2009. The research, published in October 2009, does not justify a review. It shows, predictably, that just over half the applications for new greens were not driven by either proposals in the local plan or planning applications to

develop the site; just under half the cases were associated with proposals for development in the local plan or planning applications, but with no evidence of a causal relationship. This is not surprising because, as Jonathan Shaw said, when land is threatened, people realise that they value it and want to save it.

No problem

We maintain there is no problem. But Defra is committed to a review and we have said we will support it, provided it focuses on improving the procedures, so that genuine applications can be processed swiftly and relatively inexpensively, and vexatious applications can be identified and rejected early on. We have already developed some ideas to achieve this, such as including time limits for the various stages, and amending the guidance.

Says our case officer, Nicola Hodgson: 'Communities should be encouraged to register land as greens, thereby recording their customary rights to enjoy the land. Provided the aim of the review is limited to assisting good applications and excluding vexatious ones, planners and environmentalists can work together to improve the process.'

If you have been involved in registering a green you may wish to respond to the review. Watch our website for news. □

Open day—26 June

Our member the Bursledon Rights of Way and Amenities Preservation Group is kindly hosting an open day with walks, for our members, on Saturday 26 June at Netley Abbey, south of Southampton on the east side of Southampton Water. See enclosed flyer for more information.

The fence must go

In 2001, during the foot-and-mouth epidemic, the Department for Environment, Food and Rural Affairs (Defra) erected a fence, four and a half miles long, striding across common land in the Brecon Beacons National Park.

The fence starts from near Pontsticill Reservoir in the south, crossing the hillside via Upper Neuadd Reservoir, passing just to the east of Pen y Fan and Cribyn and then cutting down through Cwm Cynwyn.

Emergency

Because this was an emergency measure, to contain stock, the fence did not require the consent of the Welsh Assembly Government under section 194 of the Law of Property Act 1925. However, it should have been removed within five years and was not. For the last three years it has been unlawful.

The Brecon Beacons Commons' Association, which wishes to retain the fence, sought our views. We welcomed this, and our general secretary spent a July day walking along much of the fence-line. There is no question that it is a significant eyesore in this wild and inspirational landscape, and a bar to the free public access to either side.

We sympathise with the commoners' economic plight, but do not believe the fence will make a significant difference in keeping people and stock on the land. We advised the commoners that we would object but, unfortunately, they decided to seek section 194 consent in any case.

After discussion with the Countryside Council for Wales, National Trust and Ramblers Cymru, we have objected to the assembly. The fence conflicts with the statutory purposes of the national park, is contrary to the policies of the national park management plan, is an eyesore in the landscape and a barrier to public access. We have reminded the assembly that in 2008 it rejected a similar unlawful fence on nearby commons (*os* autumn 2008 page 10) on the grounds that the fence was a barrier to public access (it has not yet been removed).

Grazed

We recognise that the area needs to be grazed and we have urged the assembly to support traditional management regimes such as shepherding, which would also create employment and remove any justification for fencing. The new agri-environment scheme, Glastir (Welsh for 'green land'), may provide that opportunity. To qualify, the commoners need to demonstrate a commitment to working together.

The commoners have agreed to our proposal to place the fencing application in abeyance until June 2010, to allow time for these issues to be resolved. Then the commoners should withdraw the application and remove the fence.

Looking north along Cynwyn Valley, photo: Siôn Brackenbury.



Far and Wide

Green-letter day

We declared Thursday 12 November 2009 a double green-letter day when two crusades, which have engaged the society throughout much of its recent history, reached fruition: the South Downs was confirmed as a national park, and the Marine and Coastal Access Act won royal assent.

The society has long campaigned, alongside many other bodies and most recently as a member of the South Downs Campaign, for the Downs to be protected as a national park. Back in 1947 the area was recommended for park status by the farsighted National Parks Committee (the Hobhouse Committee). The South Downs confirmation makes the Hobhouse list complete at last.

Meanwhile, the new Marine and Coastal Access Act should lead to the creation of a walking-trail right round the English coast, with a margin for roaming away from the path. We called for this law at least 70 years ago and our efforts are at last rewarded.

Coastal access—the reality

The new coastal access will not come about immediately. The Department for Environment, Food and Rural Affairs has laid an order before parliament, under section 3A of the Countryside and Rights of Way Act 2000. This sets out, among other things, descriptions of land which are coastal margin where the public will have freedom to roam alongside the new trail. The order needs approval from parliament.

Meanwhile, Natural England, which will implement the new access, is consulting on its proposed scheme, which sets out how it will carry out the work.

Downing Street has ordered that the

coastal access should be in place at Weymouth Bay in time for the 2012 Olympic Games, which provides a welcome incentive. However, while it is excellent to have the new law in place, we should be under no illusion about the potential difficulties ahead, and we shall do all we can to assist its implementation.

Dismay at Hartlebury

The environment secretary has granted consent to Worcestershire County Council to erect fencing on Hartlebury Common near Stourport, following a public inquiry in July. Our vice-president and local correspondent Edgar Powell represented us as an objector (os spring 2009 page 3).

The inspector, Martin Elliott, acting on behalf of the Secretary of State for Environment, Food and Rural Affairs, approved fencing around the main blocks of the common, including along both sides of the A4025 road.

Worcestershire County Council wants to graze the common, a site of special scientific interest (sssi), because it considers grazing to be necessary to bring the sssi into a favourable condition.

Says Edgar: 'We are dismayed that consent has been granted for this ugly and restrictive fencing. We are particularly

Land to be fenced. Photo: Edgar Powell.



concerned that the fencing will be along both sides of the A4025 road, creating a corridor, and that in many places it is not on the perimeter of the common, thus forming paddocks.

'People's right to walk and ride over the whole common will be restricted, despite the provision of gates. The enjoyment, culture and historic nature of the common are to be sacrificed for habitat conservation.

'We advocated speed limits and cattle grids, but our innovative solutions have been rejected. Common land needs special protection and we are sad that this has not been afforded to Hartlebury Common,' Edgar concludes.

Three new greens

Henley-on-Thames Town Council has voluntarily registered as a town green its land at Gillotts Field, a popular spot on the south side of Henley. South Oxfordshire District Council had earmarked the land for housing but this won't now happen.

The eight-acre Burley House Field in Burley-in-Wharfedale, eight miles north of Bradford, has been registered as a green following a 20-year campaign, and three applications, by Burley Community Council.

The first two applications, in 2000 and 2003, fell foul of court judgments and failed. The third was made in 2007, following the change in the law introduced by the Commons Act 2006. The landowner, Bradford Metropolitan Borough Council's Asset Management, objected and an inquiry was held in April 2009. This time the inspector, Vivian Chapman recommended wholeheartedly that the field be registered as a village green and Bradford Council agreed.

The third success is a field off School Hill in Newmillerdam, three miles south of Wakefield. The application was made by Graham Franklin on behalf of our member the Newmillerdam Community and Conservation Association. The land was originally part of an old colliery but had increasingly been used by local people after the colliery closed in 1981.

The landowner, Wakefield Council,

objected but agreed to withdraw provided the applicant amended his application to remove part of the site, which he did.

The application and evidence were considered by an independent barrister, Alan Evans, who recommended that the land be registered as green.

Fairford lake not green

Last September Gloucestershire County Council refused to register 40 hectares including 'Lake 104' Fairford, on the east side of the Cotswold Water Park, and adjoining green space. The landowner, Cygnet Investments, hopes to develop the site.

The council held a public inquiry in January at which the inspector was Leslie Blohm QC. He recommended rejection of the application on the grounds that the applicant had not demonstrated recreational use of the land for quiet recreation as of right for 20 years, that the use that had been demonstrated was contentious, and that the public, in using the land, deferred to the private rights of the landowner. The applicant, our member the Fairford Environmental Society, denies this.

We are advising the society on the next steps in this campaign to secure this important area for the public.

Turbine threat

Cornwall councillors overturned the advice of their officers and approved plans to build 20 wind-turbines, each 126 metres high (over twice the height of Nelson's Column), at Davidstow Wood, near Camelford in Cornwall.

The strategic planning committee took the decision at a turbulent meeting on 14 October. Yet the officers' recommendation was clear, that 'the windfarm, by reason of its size and scale in close proximity to the peaks of Rough Tor and Brown Willy and the Bodmin Moor Area of Outstanding Natural Beauty, will have an unacceptably harmful impact on the landscape character of the area, detracting from its special landscape features and its remote, wild and tranquil qualities'. They are to be sited on access land.

Fortunately the Government Office of the South West has called in the application, and we are pressing for it to be determined by the Secretary of State for Communities and Local Government.

Cissbury sell-off row

'Public landholdings are vital to the new South Downs National Park—and no more so than at Cissbury Ring, near Worthing in West Sussex.'

So declared our general secretary Kate Ashbrook at the rally organised by Stop Cissbury Sell Off last November, to lobby Worthing Borough Council not to sell its downland around Cissbury Ring. The ring itself is owned by the National Trust and is among the largest iron-age forts in Britain.

Kate told 400 protesters that the local-authority-owned downland on the southern fringe of the new national park provides a grand landscape-setting for the coastal conurbations. The land was acquired for the people of those towns, but the authorities forget this too easily.

In 2008 Worthing Borough Council declared that it would sell the Cissbury downland. Now, thanks to pressure from campaigners, the council's cabinet has withdrawn the land from sale. We remain concerned that the council will nevertheless sell the leasehold interests in the land: we

want it to remain firmly in control until there are clear conditions governing the land management, including restoration of wildflower-rich chalk grassland.

People have the right to walk on only one third of that downland, but they have traditionally roamed the whole area. We look to Natural England's forthcoming review of access land, under the Countryside and Rights of Way Act 2000, to ensure the access maps embrace this downland which should have been included first time round.

Ground-breaking work

Elinor (Lin) Ostrom, Professor of Political Science at Indiana University, has won the 2009 Nobel Prize in Economic Sciences for her ground-breaking paper 'Governing the Commons: the evolution of institutions for collective action'.

Her work shows that common property is often best managed by the users of that property, who create and enforce measures to prevent over-exploitation. This goes against the popular belief that the solution lies in government regulation and intervention, by taxes or quotas, or privatisation of the resource.

Although Lin's thesis is about commonly-used resources in general, rather than common land in England and Wales, it

The protest at Cissbury. Photo: Trevor Hodgson.



Standing as a trustee

The society's constitution allows for nine trustees to be elected, and at present we only have six. Therefore, we are looking for members to stand as trustees, for election at our annual general meeting on 6 July.

Trustees attend four meetings a year in London or Reading (with expenses reimbursed) and you may volunteer to serve on a subcommittee or working party. The essential requirement is to act in the best interests of the society at all times.

If you'd like to know more about it, please contact the office. You would be welcome to attend one of our meetings as an observer. The closing date for nominations is 24 May.

is highly relevant to our commons. These have survived because of the many different interests which have a stake in them. Lin's research shows that we need to maintain our ancient commons as places where all who have an interest can contribute to their future.

We congratulate Lin and are delighted that she has put commons, in their widest sense, firmly on the map.

Eastleigh spaces

As Eastleigh Borough Council, Hampshire, transfers its open spaces to the parish councils, we wrote to every parish council in the borough to offer our help.

We have called on the parishes voluntarily to register these open spaces as town or village greens. This will give local people rights to enjoy the land for informal recreation.

We have also suggested to the parishes that they survey all the open spaces in their areas, to see if there is other land which is eligible for registration as a green.

We are disappointed that not one of the parishes has yet replied.

Welsh Harp

Neighbouring Barnet and Brent Councils have each rejected planning applications which straddle their boundaries, from Malcolm Scott (town planning consultants),

for a total of 160 houses on Metropolitan Open Land adjoining the popular Welsh Harp reservoir.

We objected, backing the pressure group, Save Our Remaining Bits of Green. This green lung is treasured by residents and visitors who enjoy the Welsh Harp reservoir and its surroundings, for quiet recreation and bird watching. The Capital Ring long-distance path goes along the edge of the reservoir, and would be severely affected by the development, as would other public paths in the vicinity. We hope the applicants won't appeal.

Chubb memorial

When Tony Ghilchik, vice-chairman of the Heath and Hampstead Society, appealed in the society's newsletter for the wording on the missing plaque of The Sir Lawrence Chubb memorial shelter, we were able to help. Our *Journal* of April 1952 recorded the opening ceremony and gave the inscription:

*In Grateful Memory of
LAWRENCE WENSLEY CHUBB, Knight
to whose genius the preservation of open
spaces and the provision of playing fields
were largely due. He was for 52 years
Secretary of the Commons, Open Spaces
and Footpaths Preservation Society and for
20 years Secretary of the National Playing
Fields Association. 1873–1948.*

In reporting our discovery in the September newsletter, Mr Ghilchik points out that the Heath and Old Hampstead Society's 1951 annual report stated: 'The Committee cannot approve the appearance, or the position on the Heath of a memorial to the late Sir Lawrence Chubb. In spite of objections made by this Society to the Commons, Footpaths and Open Spaces

Member survey

Please fill in the enclosed survey form. It will help us to give you a better service and to see if you are able to help us. Please return the form, using the freepost address provided or via our website as explained on the form, by the end of March 2010.

Society (*sic*) the latter proceeded with their plan and it was carried through without the cognizance or approval of this Society.'

Fortunately, amends were made and the local society reports that 'the shelter is now a cherished bit of the Heath landscape' and that the City of London is arranging for the plaque to be replaced.

Picket Mead

Carrington Moore Estates Ltd hopes to build five houses next to Picket Mead common at Newton, west of Swansea.

However, the so-called 'associated works' involve a driveway over the common, which will suburbanise it. The common has rights for riders as well as walkers, under section 193 of the Law of Property Act. Since it is illegal to drive any vehicle on a section 193 common, a driveway will be of little use to anyone.

Thank you

You have raised over £7,500 from your generous donations to our appeal to lobby candidates for the forthcoming general election.

Thank you for your generosity.

The value of commons

At the end of January we won a contract from Natural England to prepare guidance for people involved in the management of commons, on how to identify and assess the value of commons to local communities and neighbourhoods.

This will be a fascinating and important exercise, for which the society is well qualified. However, it must be done by the end of March 2010. So we'll be busy!

Diane bows out

Last autumn Diane Andrewes retired from the board of trustees due to personal and family commitments. We are grateful to Diane for her help and support as a board member.

We also appreciate the work she is now putting in, through the Bursledon Rights of Way and Amenities Preservation Group, to prepare for our members' open day in June. □

Dennis Nisbet

We are sad to report that our member Dennis Nisbet has died aged 89. In the words of Eugene Suggett, senior policy officer at the Ramblers, Dennis was 'a politically-adroit and inspiring campaigner'. In the 1980s he was a Labour member of Essex County Council. When the 1985 election produced a hung council, Dennis, with his Labour and Liberal/SDP colleagues, managed to persuade the council at last to focus on rights of way and to get tough with path blockers—he called this triumph the October Revolution.

Rationalisation

He fought a path-rationalisation scheme at Canewdon in Essex and also helped the Ramblers and OSS to defeat the pernicious Ombersley rationalisation scheme in what was Hereford and Worcester county.

In later years he retired to Church Stretton in Shropshire with his wife Joy. He will be remembered especially for the path he claimed to the top of Ragleth Hill, then forbidden land (although subsequently it became access land under the Countryside and Rights of Way (CROW) Act 2000) and for the Nisbet Way, between Church Stretton and Little Stretton.

In 2004, Dennis became the first landowner to dedicate land to public access under section 16 of the CROW Act, at Lurkenhope Wood near Knighton, with spectacular views of the Shropshire Hills. This generous gift is a fitting memorial to Dennis and his work for walkers.

From left to right: Dennis, Kate Ashbrook and Joy Nisbet, at the launch of Church Stretton as a Walkers Are Welcome Town in June 2008. Photo: John Corfield.





Botham's Hall Bridge

Tameside Metropolitan Borough Council in Greater Manchester made a diversion order, under section 119 of the Highways Act 1980, for two routes.

Longdendale footpath 76 (Tameside) and part of Chisworth footpath 24 (Derbyshire) comprise one route leading south from Leylands Lane, across the River Etherow on a footbridge (the county boundary), and then east along the south bank of the river.

Longdendale footpath 77 runs from Leylands Lane and crosses the river by a farm accommodation bridge, known as Botham's Hall Bridge, which is out of repair. South of the river, footpath 77 does a right-angle bend and then continues in a southerly direction.

The proposed diversion in effect makes the two paths into one, using the footbridge with a link path between Chisworth 24 and Longdendale 77.

Section 56

Some years ago Edwin Holmes, of the Longdendale and Glossopdale Footpath Preservation Society, served a notice under section 56 of the Highways Act 1980 on Tameside Council to repair Botham's Hall Bridge. In July 2007, Tameside Magistrates' Court ordered the bridge to be repaired and gave the council extra time.

Instead of repairing the bridge, the council made the diversion order to evade

the court order.

A public inquiry was held in June 2009, at which Don Lee, our Manchester local correspondent, appeared as one of 18 objectors.

The inspector, Martin Elliott, rejected Don's arguments that, with a court order in place, the inquiry should be postponed, and that Derbyshire County Council, through whose territory part of the paths ran, should be required to be present.

The order was made in the interests of the owners: Mrs Keating (the land crossed by footpaths 76 and 24 and the alternative) and Mr Massey (the land crossed by footpath 77).

The council argued that the diversion would benefit Mr Massey because it would help people to keep to the correct line of the path, removing their temptation to cut the corner and avoid the muddy area of the field. It would also allow Mr Massey to assume full responsibility for Botham's Hall Bridge, and would help to reduce conflict arising from use of the bridge by both agricultural vehicles and the public. However, the council had no record of any incidents here.

Interest

The objectors pointed out, among other things, that neither landowner felt sufficiently strongly to attend the inquiry. Moreover, it could not be in Mr Massey's interest to take on responsibility for the maintenance of the bridge.

The inspector noted that Mrs Keating's acceptance of the diversion appeared to be conditional on the council providing a fence to enclose the alternative route to prevent trespass. As this would be at no cost to Mrs Keating, the inspector considered it to be in her interest. However, he did consider the benefits to be 'marginal' since fencing the path would reduce the area for grazing.

He found the evidence that the order was in Mr Massey's interest 'to be less compelling'. The sole evidence from Mr Massey is correspondence indicating his agreement to the diversion and outlining his proposals, as a safety measure, in relation

to the securing of the bridge'. But, as the inspector said, 'the fact that he is agreeable to the diversion does not necessarily evidence that it is in his interest'.

On this point, the inspector concluded that the diversion 'would reduce any inadvertent trespass', it would 'allow Mr Massey to take control over the accommodation bridge and, although there is no evidence of any difficulties arising from the joint use of the bridge, there are liabilities from that use, relating to public safety, which would fall to Mr Massey'. Also, 'there is no evidence to suggest that the council are responsible for maintaining vehicular access for Mr Massey, the public highway rights over the bridge are pedestrian only'.

Therefore, 'although the issue is very finely balanced', the order is in the interests of the owners.

Other tests

Moving on to the other tests, despite arguments to the contrary the inspector concluded that the diversion was not substantially less convenient to the public and that the proposed new termination points were substantially as convenient as the existing ones although 'the issue is very finely balanced'.

On the effect which the diversion would have on public enjoyment of the paths as a whole, the inspector concluded that it would have an adverse effect on the overall enjoyment of the paths. This was because of loss of views, particularly of the river, and a less enjoyable experience.

One would have thought that, given that the tests about the interests of the owner and the termination point were so finely balanced, and that the 'order provides alternative routes which are detrimental to the enjoyment of the ways as a whole', the inspector would have concluded that it was not expedient to confirm the order. Sadly, this was not so.

Worryingly, he concluded that he should take account of the cost to the public purse of replacing Botham's Hall Bridge, and that 'the diversion of footpath 77 will in my view provide considerable savings. As such

in deciding the expediency of the order some significant weight should be given to this aspect'. He concluded that 'on balance, the loss in enjoyment arising from the order is outweighed by the cost savings of not having to provide a replacement bridge'.

He confirmed the order. (*Ref FPS/G4240/4/1, 22 Sep 2009*)

Landmark law

This year marks the centenary of the Finance Act 1910, a landmark law which has proved valuable in claiming routes as public paths for the definitive maps of rights of way in England and Wales.

David Lloyd George's Finance Act 1910 introduced a tax on land, but landowners could apply for a reduction in tax if they admitted the existence of a public right of way across their land.

The land valuation was undertaken by district valuation officers of the Commissioners of Inland Revenue, and involved the compilation of field books and maps listing all property, a 'Domesday Book', and various forms including one

Nicola's decade

Congratulations to our case officer, Nicola Hodgson, who last October completed her first ten years with the society.

We thank Nicola for a great decade, and for developing our knowledge on commons, greens and open spaces so proficiently.

listing all holdings of a particular individual. All private land, including private roads, was assigned an assessment number. The valuers' job was to assess the land for duty. In doing so they made deductions for, among other things, 'the amount by which the gross value would be diminished if sold subject to any public right of way' (section 25 (3) of the Finance Act 1910).

The 'Domesday Books' are held at the National Archives at Kew, and in many local record offices throughout England and Wales.

This law is still valuable to us today in claiming public paths for the definitive

map. Lloyd George (noted for his hatred of landowners) would have been pleased to know that his Finance Act would still be relied on by path users a century later!

Paths and planning

In our response to the consultation from the Communities and Local Government department, Publicity for Planning Applications, we have called for a new requirement for planning authorities, namely to notify organisations representing path users when a planning application affects a public right of way.

Too often planning applications have a detrimental effect on public paths adjoining or crossing the site. Although there is a requirement to advertise the fact that a planning application affects a public right of way, this is too subjective and may in any case be neglected. It is impractical for us to study all the planning applications every week.

Otherwise we may only hear of the proposal when it's too late—planning permission has been granted and there's an application to close or move the affected path. If we object at that stage there is less opportunity to negotiate a solution and there will be delays while the path issue is resolved, causing stress and expense to all parties. Moreover this runs counter to the government's intention of speeding up the planning process.

Clophill claims

Last March, Bedfordshire County Council approved the claim for two paths in fields near Clophill by our member, Maurice Lewis—and rejected the other three. Maurice has appealed to the Government Office North East, which deals with such appeals on behalf of the Secretary of State (Defra), to direct Central Bedfordshire (which replaced Bedfordshire County Council on 1 April 2009) to make the order for two of the three. He awaits the outcome.

With 62 user-evidence forms collected from walkers, the bone of contention is a route passing through a small thicket (pictured above right) which is assumed to be on consecrated land belonging to an



The contentious thicket. Photo: Central Bedfordshire Council.

existing graveyard, the reason why the council rejected the path. One part of the route is through an amenity area and the other part runs along the boundary of a field and village allotments. The second claimed route connects with this, and therefore is dependent on it being added to the map. If Maurice loses, valuable paths will be lost.

Gwynedd's paths

We have slated Gwynedd Council's plan to divide its 3,800 km of mapped public rights of way into four categories. Category 1 includes promoted routes; category 2, popular paths used mainly for leisure; category 3, paths with only occasional use and category 4, routes which the council considers have 'no obvious benefit or potential'.

As always, the problem is that those in categories 3 and 4 will get much lower priority and when resources are slim, they will get no attention at all.

Alleygates in Bradford...

We deplore the gating order, made by the City of Bradford Metropolitan District Council, for public highways in Little Horton, just south west of the city centre.

The gating order, closing off Back Ashgrove and Back Melbourne Terrace, came into effect on 1 October 2009, despite strong objections from the society and the West Yorkshire Pennine Local Access Forum, and against the advice of Bradford's strategic director regeneration (*sic*), Barra Mac Ruairi.

Bradford admitted that there were no

crimes recorded for the vicinity of Back Melbourne Terrace, and that there was no information for Back Ashgrove because it is not identified as a street. So the officer recommended that the gating scheme for Back Melbourne Place be abandoned. However, inexplicably, he recommended that the council proceed with the gating order for Back Ashgrove.

The Bradford West Area committee overruled his advice for Back Melbourne Place and decided to make gating orders for both routes. This means that people who wish to use the most direct route through this area must go significantly out of their way, on roads bearing traffic.

...and Luton

We have objected to Luton Borough Council's gating plan on the alley to the rear of Whitwell Close, north Luton.

The proposal is to lock the gates during term time because of the alleged problem caused by students at nearby Barnfield College.

The council has not obtained sufficient evidence that the highway is assisting crime and antisocial behaviour, merely that some students are causing problems. We strongly object to public rights being removed as a result of the college's inability to control some of its students. While we appreciate it might be embarrassing for the college, which flaunts an 'outstanding' Ofsted rating, to have to admit to such problems, it should deal with them.

Gate replaces stile

Anne Stout of Hollingbourne in Kent has reopened an important footpath in nearby Eythorne Street, five miles east of Maidstone. For years the path was blocked by an impossibly difficult stile. Now it has a usable kissing-gate.

The footpath, KH198, runs across the drive of Grove Mill Cottage and provides a link between Eythorne Street and the fields beyond. It can be used by young children from the south of the village to reach their local primary school, avoiding the dangerous, busy road. Its entrance is within easy walking distance of Leeds Castle and

is next to Hollingbourne village shop.

About ten years ago, the owner of Grove Mill Cottage removed the easy-to-use stile and replaced it with one which could only be traversed by extremely agile people. Partially-sighted Anne Stout was among those who were forced to turn back.

Kent County Council was sympathetic to the walkers' case, but said that, although the stile was an obstruction to the elderly and infirm, it was legitimate. The law allows the highway authority to authorise stiles and gates on public footpaths where they are necessary for agricultural reasons. This stile conformed to the British Standard.

However, Mrs Stout would not take no for an answer. She formed the Wobblier Would-Be Walkers group, and wrote to many people about this outrage. At last, the farmer has installed a solid, iron, kissing-gate, so that he can graze cattle in his field and walkers can enjoy the footpath.

Darwin fights for footpath

We have obtained from the Department of Manuscripts at Cambridge University a copy of a letter dated 30 May 1878 from the treasurer of our predecessor, the then Commons Preservation Society, Edward William Fithian, to Charles Darwin. In beautiful script, it says:

Dear Sir

Knockholt & Chevening Footpath Fund
As Treasurer of the above Fund I have been requested to make a call of one third of the amount guaranteed towards defraying the expenses incurred in resisting the closing of this footpath. This sum will be sufficient to meet the liabilities incurred. As you kindly guaranteed £7.0.0* I shall be glad if you will favour me with one-third of that sum. When the accounts have been closed a Balance Sheet will be sent to each subscriber.

I am, yours truly, Edward W Fithian.

*Chas Darwin Esq	£3.0.0
Miss Darwin	2.0.0
Miss Wedgwood	<u>2.0.0</u>
	<u>£7.0.0</u>

Marjorie Kerr— lifelong campaigner

Marjorie Kerr, who has died aged 83, was an unremitting and enthusiastic activist for both the Open Spaces Society and the Ramblers. She was, jointly with her husband Jim, our local correspondent for East Dorset and Christchurch for 16 years, from 1989-2005, though she ranged far across Wessex.

Marjorie's early years were spent in London, but her schooling was interrupted by the war and she was evacuated to Hove in Kent, then Teignmouth in Devon, where she enjoyed walks on the cliffs and on Dartmoor. At school she shone at maths, music and English but, like so many working-class girls, had no opportunity for further education and in 1942 she was summoned back to London to work in an insurance office. She resorted to evening classes for speech-training and drama.

Blonde with brains

At the age of 19 she won first prize in the British Federation of Young Co-operators' national public-speaking contest. The movement's magazine, in reporting her triumph, called her 'a blonde with brains'.

Soon after the war she met and married Jim who was one of a group of young socialists, introduced to her by their friends Ivy and John Alexander (now members of the OSS).

Marjorie then took up a teaching career, in maths and English, first in London then in Dorset. Music and the theatre were important to her and she produced outstanding concerts and plays.

Marjorie was a ramblor and a socialist. So when Jim and Marjorie joined the Ramblers in 1971 they did so not only as walkers but as campaigners for public access and paths. As Ivy Alexander recalls: 'Never did Marjorie hesitate either to organise a protest or to help others to do so when walkers' or commoners' rights were threatened.'

Marjorie fought the desecration of Cranborne Chase and the New Forest by golf courses and the tearing up of ancient droveways by four-by-fours. She saved the ancient path leading to Hampreston Church, which was to have been extinguished by the Bournemouth and West Hants Water Company's reservoir. And she persuaded Hampshire County Council to replace Silver Sands Bridge near Burley, rather than divert the path, and Dorset County Council to provide a bridge on the path across Parley Common.

Poor Common

Marjorie and Jim formed the Friends of Poor Common and campaigned long and hard to try and save this lovely open space from housing development. And they wrote many walks books, packed with information about the countryside.

Marjorie was a lifelong campaigner. Thanks to her gutsy determination, the paths and countryside of east Dorset and beyond are in far better shape than they would have been without her intervention.

Marjorie in Canada. Photo: Jim Kerr.





Reviews

Our midland legacy

The Midland Area of the Ramblers' Association 1930-1987 by Michael Bird, chairman of the Ramblers' Warwickshire Area, recalls the days when Ramblers were claiming paths for the definitive maps, over a vast territory. It reveals that the Midland Ramblers might have been the Midland branch of the Commons, Open Spaces and Footpaths Preservation Society, were it not for the reluctance of our secretary, Sir Lawrence Chubb, to assist in litigation matters. This led to a proposal to form a Ramblers' Federation, to further the social side of rambling as well as protection of footpaths.

A good read, it is available for download from www.warwickshireramblers.org.uk.

The Wind Farm Scam by John Etherington (Stacey International, £9.99). A former editor of the international *Journal of Ecology*, John is a well-respected ecologist, so his demolition of the wind industry's arguments is all the more powerful. This is valuable ammunition for those fighting wind turbines in our countryside. He attacks them for their inefficiency, cost, landscape degradation and much more. He shows how claims of job creation are false, and reveals the manipulation and misrepresentation by turbine promoters.

The UK Trailwalker's Handbook (eighth edition), edited by Paul Lawrence, Les Maple and John Sparshatt (The Long Distance Walkers' Association and Cicerone, £18.95) describes nearly 1,000 trails in the United Kingdom. The national trails each have a couple of pages of useful information. The other trails are grouped in

Norman Painting

We were sad to learn of the death of our honorary life member Norman Painting, aka Phil Archer, who in 1994 broadcast a successful appeal for the society on Radio 4's *The Week's Good Cause*.

somewhat arbitrary 'regions' (eg Northern England, North-West England, and Cumbria and Northumberland). A useful book for starting to plan a walk and to tell you the range of opportunities. **KA**

Search for the liveliest village green

Do you hold fairs, parties, maypole dancing or sports events on your green? Is it used year round? Why not enter the competition, run by TruGreen Professional Lawn Care and the *Sunday Telegraph (Life)*, with support from the society, for Britain's liveliest village green?

To enter, email a 50-word reason why your green is the liveliest in Britain, with a low-resolution image, to villagegreen@trugreen.co.uk. To be eligible your green must be registered with the commons registration authority (county, unitary or metropolitan borough council). The best four entries will receive £50 of National Garden gift vouchers, redeemable at 2,000 garden centres in the UK, and a year's free membership of the oss.

For further information see <http://tinyurl.com/yepa698>. Closing date is midnight on 7 March 2010. Best entries will be published in the *Sunday Telegraph* on 18 April.

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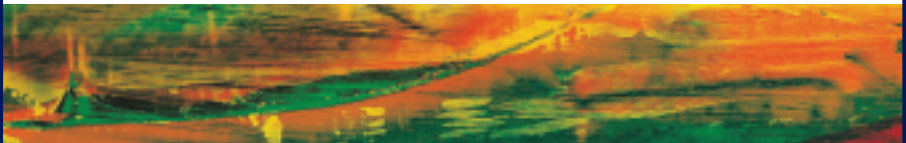
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The Open Spaces Society, formally the Commons, Open Spaces and Footpaths Preservation Society, was founded in 1865 and is Britain's oldest national conservation body. We campaign to protect common land, village greens, open spaces and public paths, 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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