

Open Space

Autumn 2017

Vol 31 No 10

*This is not
greenspace
says
Ordnance Survey*

Inside

- Public access in Wales
- Claiming commons
- Meadow Triangle in court

 Open
Spaces
Society

Campaigning since
1865

Open Space

- 01 Opinion
- 02 Flying the practitioners' flag
- 03 Case file
- 05 Claiming commons
- 06 Better access in Wales
- 08 Far and wide
- 14 Path issues
- 16 Reviews

Cover story

Parliament Piece, our land at Kenilworth in Warwickshire, has been open to the public for the past 30 years. Yet it is not shown as 'greenspace' accessible to the public on the Ordnance Survey's new online maps (see page 8). We have said these maps are more likely to confuse than clarify. Photo: Kate Ashbrook.



Paths to oblivion

Thirty years ago (3 September 1987) we were present at the launch of the Countryside Commission's far-reaching policies and priorities for enjoying the countryside.

Top priority was to have the entire rights-of-way network 'legally defined, maintained and available for use before the end of the [last] century' with up-to-date definitive maps. The commission recognised that 'the national system of 120,000 miles of rights of way is the single most important means of access to and enjoyment of the countryside.'

Target

Of course the year-2000 target was not achieved, but the commission and its successor the Countryside Agency put money and resources into local authorities and voluntary organisations to work on paths. The condition of the network improved. The agencies themselves had many staff working on paths and access; they advised, trained and chivvied. They undertook experiments with schemes like the Parish Paths Partnership in which they funded and encouraged parish councils to get involved in path maintenance.

The rights-of-way network is as important now as ever before—yet Natural England (NE), the Countryside Agency's successor, appears to have fewer than two full-time staff working on local paths.

It is timely that a House of Lords Select Committee is examining the Natural

Environment and Rural Communities Act 2006. This set up NE by combining English Nature, the Countryside Agency and part of the Department for Environment, Food and Rural Affairs (Defra).

We told the committee that NE is doing an excellent job in creating the coastal route and adjoining access land around England. But, in our experience, NE's statutory purpose to promote access and open-air recreation is being sidelined in favour of its regulatory conservation and biodiversity functions. All field staff should be trained in public access for, despite the intention, wildlife and access skills have not been integrated.

NE is being subsumed into Defra. It no longer issues press releases nor has its own website. The arm's-length adviser is becoming a government mouthpiece.

Post-Brexit

We need NE to lead the charge for post-Brexit funding for public recreation as well as wildlife habitats; there is great potential here to create new paths and access opportunities.

And as local authorities continue to slash funding on rights of way, and the 2026 definitive-map cut-off looms closer, we need NE to champion our public paths, with adequate resources, an independent voice, and the willingness to innovate. If it allows itself to be sucked into government it will disappear into oblivion. **KJA**

Flying the practitioners' flag

Our general secretary went to an international commons conference in Utrecht, the Netherlands, in July.

This was the biennial global conference of the International Association for the Study of the Commons (IASC), a largely academic body. My visit was funded from the Elinor Ostrom Award, won by the society in 2013.

I was keen to fly the flag for activists here and this year we had a higher profile. The organisers had included on the programme a series of 'practitioners' labs' where practical topics could be discussed. I put one together on 'Defending land rights: exploring solutions to current issues' with contributors from Peru, India, Mexico, USA, the Netherlands, and the UK. It was well attended and generated much interest.

One day was devoted to field trips. I went to the Veluwe area, about 20 miles east of Utrecht. We visited the Ginkelse and Ederheide heathland which was reminiscent of the Surrey commons. Here the vegetation is maintained by a native breed of sheep, *Veluws Heideschapp*. Then we walked the boundaries of the

Veluws Heideschapp grazing on heathland (left) and a Klompenpaden clog waymark (right).



old commons of the Doesburger buurt (neighbourhood).

The commons were used as extensive pasture for sheep, cattle, goats and pigs, as well as for gathering sods, sand and gravel, and wood. Governance was by a chairman and secretary, elected by those with common rights.

Communal systems ended in the nineteenth century with the over-exploitation of the waste land, competition from imported wool, the introduction of artificial fertilisers, and sale of land to individuals. But the memories of the commons live on. We were escorted by historian Gerrit Breman who gave colourful accounts of the days when the commons systems flourished.

We walked along paths labelled with clog waymarks indicating that the route was negotiated by the voluntary organisation *Klompenpaden*. We finished at Doesburger Molen, the oldest wooden windmill in the Netherlands, having learnt a great deal about the Dutch commons. □





Meadow Triangle

R (St John's College) v Cambridgeshire County Council and Davies [2017] EWHC 1753 (Admin), 12 July 2017.

The high court clarified the initial role of the commons registration authority in processing an application under section 15 of the Commons Act 2006.

The authority must first decide whether an application is duly made and therefore procedurally compliant with the regulatory requirements, and must not at this stage consider the merits of the application. It may afford opportunities to the applicant to put right any defects, but must act quickly to secure a duly-made application. The government's guidance on these aspects was criticised (and redrafted in the judgment).

Omitted

The interested party, OSS member David Davies, had applied to Cambridgeshire County Council for registration of the 0.6-hectare Meadow Triangle, adjacent to Wilberforce Road in Cambridge, as a town green. He applied nearly 11 months after the landowner, St John's College, had deposited a statement under section 15A of the Commons Act 2006, bringing use of the land 'as of right' to an end. An application for a green must be submitted within one year of such a statement.

The applicant omitted some requirements and the authority gave him several opportunities to correct the defects (not least because the council failed to spell them all out to him in its first response). By the time those requirements were met, more than 12 months had passed since the deposit of the section 15A statement.

The college applied for judicial review of

the further opportunities afforded to Mr Davies to put right his application, and the authority's decision to treat the corrected application as duly made.

Reviews

The judge, Sir Ross Cranston, thoroughly reviewed the requirements of the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007, which set out the procedure for registering new greens—although ten years on they are hardly 'interim'. The judgment (paragraphs 10 and 40) distinguishes the 'preliminary considerations' the authority must take into account in deciding whether the application is duly made and can be processed, and the 'merits' which are for later on, and yet to be decided.

The judge was critical of the government's guidance which wrongly advised that the authority should look carefully at the evidence before advertising the application, since consideration of the merits comes later. Following the hearing, George Laurence QC for the college and Paul Wilmhurst, barrister for the county council, redrafted the guidance so that it accurately represents the law. It is an annex to the judgment and should be consulted by applicants until such time as the case is reflected in amended government guidance.

The college argued that the authority was entitled to give Mr Davies only one chance to make corrections. The judge disagreed and noted that Lord Hoffmann in *Trap Grounds* (OS autumn 2006 page 6) had said 'that the procedure for registration was intended to be relatively



Meadow Triangle.

simple and informal'. However, he agreed with the decision of the court in *Church Commissioners for England v Hampshire County Council* (OS autumn 2013 page 6) that 'applicants may be given only relatively short periods under regulation 5(4) within which to remedy defects,' and thought the month allowed in the present case was appropriate. The judge was critical of the authority's delay in scrutinising the application.

The judge concluded that the council was right to allow additional opportunities to rectify the application, and to treat the corrected application as duly made. He dismissed the college's application.

Grampian conditions upheld

R (on the application of Network Rail Infrastructure Ltd) v the Secretary of State for the Environment, Food and Rural Affairs [2017] EWHC 2259 (Admin), 8 September 2017.

The case is about a 'Grampian' planning condition attached to the decision notice of a development near Appleby in Cumbria. A Grampian condition is a planning condition attached to a decision notice which prevents the start of a development until a specified action has been taken (*Grampian Regional Council v City of Aberdeen District Council* (1984) 47 P&CR 633).

In this case, the condition prevented the completion of the development until an order under section 257 of the Town and Country Planning Act 1990 had been made to stop up a nearby railway

crossing, and was either confirmed or not confirmed. Network Rail had insisted on the condition because it considered the proposed housing estate would generate increased pedestrian traffic over the level crossing with a consequential increase in the risk of an accident.

The inspector at the public inquiry into the stopping-up order, Alan Beckett, refused to confirm the order on the grounds that it was not necessary to the development because the condition contemplated the order being rejected (*FPS/H0928/5/1*, 4 January 2017). Network Rail applied for judicial review of the inspector's decision.

Quashed

The judge, Mr Justice Holgate, upheld the appeal and quashed the decision because he considered that the inspector was confusing the 'necessity' test in section 257 (that it must be necessary to stop up the path in order to enable the development to be carried out) with the 'merits' test. He confirmed that the Grampian condition was lawful.

The judge did not directly address the propriety of a section 257 order stopping up a footpath beyond the development site itself, but as the practice was endorsed by the House of Lords in *Grampian*, it seems beyond challenge.

The judgment may be helpful to user groups. Now we can campaign for a development affecting public rights of way to be subject to a Grampian condition. This means that obstruction of rights of way in a development is subject to planning enforcement.

The downside is that such a Grampian condition also means that an order under section 257 automatically satisfies the 'necessity' test even when it otherwise would not, for example where the development barely affects the right of way. So, Grampian conditions should be used with care. □

Claiming commons

Generous legacies have enabled us to invest in a project to rescue lost commons in England and Wales.

Tomas Hill, who lives in Cornwall, has been contracted part-time by the society to put commons back on the registers.

He will draft and make applications on our behalf to register commons 'voided' under paragraph 4 of schedule 2 to the Commons Act 2006. These are commons whose provisional registration under the Commons Registration Act 1965 was cancelled, often by agreement between a handful of parties, so that they ceased to be common land. Paragraph 4 enables anyone to register many of these commons as 'waste land of a manor' if they remain, at the date of application, open, uncultivated and unoccupied, and meet certain other conditions.

Tomas will be focusing on the 'pioneer areas' in England (Blackburn with Darwen, Cornwall, Cumbria, Devon, Herefordshire, Hertfordshire, Kent, Lancashire and North Yorkshire) where the provisions of the Commons Act 2006 for re-registration are in force. If time permits he will also consider opportunities for new registrations in Wales, under the interim arrangements

brought into force there in May this year.

In the first of the pioneer areas we have only until the end of 2020 to make such applications, but in those designated later, North Yorkshire and Cumbria, we have until March 2027.

Air and exercise

The society believes that, where commons are successfully re-registered within former urban districts and boroughs, registration will secure the right of access for 'air and exercise' under section 193 of the Law of Property Act 1925. Indeed, the British Horse Society is financially supporting our project to secure rights for horse riders in these areas.

In his own right, Tomas has made numerous applications in Cornwall under paragraph 4 with an excellent success rate. We look forward to further successes for the society, in his home county and elsewhere.

If you have any potential candidates for re-registration in these areas, please let us know.

A reclaimed common at Carn Kenidjack, two miles north-east of St Just in Cornwall. Photo: Ian McNeil Cooke.



Better access in Wales

We have responded enthusiastically to the Welsh Government's consultation on access to the outdoors.

Two years ago, we sharply criticised the Welsh Government's consultation on access and recreation for its proposed sweeping changes to the law on public rights of way (OS autumn 2015 page 15). The latest consultation is an encouraging improvement, although somewhat unclear.

The access chapter is part of a much larger consultation, 'Taking Forward Wales's Sustainable Management of Natural Resources'.

Here, the government proposes to extend public access to coast and cliff under the Countryside and Rights of Way Act 2000 (CROW) which we welcome. However, we suggest that public access should be created on both sides of the Wales Coast Path thus ensuring Welsh access is not inferior to English. We have also supported the application of CROW to land types such as woodland, with greater access to riverbanks and lakesides.

We back an all-Wales digital map of access, and a statutory code for access

provided that it requires good behaviour from landowners and managers as well as users.

We oppose the plan to allow cycling and horse-riding on public footpaths as a matter of course and argue that each case should be judged separately, once the suitability of the route has been identified by the local access forum (LAF) and the proposal included in the highway authority's rights of way improvement plan (ROWIP).

Status

LAFs should have greater status and a stronger link with the Wales National Access Forum, and highway authorities should have a duty, and extra funding, to implement the ROWIPs.

Currently, when a footpath is converted to a cycle track it is removed from the definitive map: there is a sensible proposal to repeal the Cycle Tracks Act 1984. However, in response to the proposition to create a new type of public right of way—cycle paths—which would prioritise cycling

Panorama from Pumlumon, central Wales, a Crown Estate common dedicated for public access in 1932. Photo: Liz Fleming-Williams.





Walkers near Devil's Bridge, a Walkers are Welcome town in Ceredigion.

and walking, we have made a simpler proposal: legislate to convert all cycle tracks into bridleways so that they are shown on the definitive map and walkers, riders and cyclists all have rights in them.

To our delight, Welsh Government recommends the repeal of the 2026 cut-off date for recording historic routes—something we pressed for in our response to the 2015 consultation.

We support proposals to make it easier for local authorities and land managers to remove unnecessary stock-control measures; we have added that consents for gates or stiles under section 147 of the Highways Act 1980 should be published on highway authority websites with the decision and reasoning. Consent should be withdrawn for obsolete structures.

Our proposals

We have made additional proposals to improve rights of way and access. These include a duty on authorities to consult users before making traffic regulation orders or public spaces protection orders where these affect rights of way, commons or greens.

There should be a streamlined system for fining those who obstruct public paths.

The Welsh scheme of agricultural funding (*glastir*) should be used to secure more and better access, and there should be strict enforcement of conditions which

require public paths to be kept clear of obstruction.

As part of planning consent, developers must dedicate all paths as public rights of way and open spaces as town or village greens to secure them in perpetuity. There should be a right of appeal, and a requirement to provide suitable exchange land, before open space is taken for another purpose.

A speed limit of 20 mph should be imposed on all unfenced roads across common land, to safeguard public access, the stock and the landscape, and there should be a right for the public to ride horses on all commons.

We have joined a new alliance of user groups, Outdoor Access Wales, calling for better access to the countryside.

Landscapes debate

In the same document the Welsh Government has sought views on the future of Wales's designated landscapes. This is a welcome climb down: it was previously forging ahead with plans for legislation (OS summer 2017, Opinion).

We wrote to Assembly Members before a debate in the Senedd in June, calling for consultation. With the Snowdonia Society, the Campaign for National Parks, and four other bodies we backed an advertisement in three Welsh national papers just before the debate, urging people to tell their AMs what the national parks mean to them. The debate was a success and the environment minister, Lesley Griffiths, agreed to consult—the future of designated landscapes was thus added to the consultation document.

We have said there is no need to legislate afresh on the purposes and functions of designated landscapes, but they must have better recognition and protection. We want to be consulted on any further plans for them.



Greenspace muddle

The Ordnance Survey (OS) has produced a new online map of 'greenspace' covering Great Britain, but this fails to meet the commitment in the Conservative Party's 2015 manifesto to provide 'free, comprehensive maps of all open-access greenspace'.

While we welcome progress towards making open space better known, the data here offered (<http://bit.do/dL6na>) are more likely to confuse than clarify. The maps do not discriminate (see pictures below) between public open spaces and land used exclusively for private recreation. Private golf-courses, allotments, recreation grounds and sports facilities are shown as greenspace 'likely to be accessible to the public'.

A golf course on common land with access rights is shown in the same way as a private golf course. Oddly the maps ignore the extensive open country on which we have a right to walk under the

Left: land owned by Denham Parish Council, Bucks, for public recreation is not on the OS's new greenspace database; but the private golf-course (right) a few yards away is shown.



Countryside and Rights of Way Act 2000.

We shall urge the OS and Secretary of State for Business, Energy and Industrial Strategy to publish a map of truly accessible land in Great Britain.

Unfrozen moment

Shortly after his appointment as environment secretary, Michael Gove gave a speech entitled 'The unfrozen moment, delivering a green Brexit' in which he failed to mention public access.

However, when answering questions afterwards, he said that as education secretary he had worked to make it easier for schoolchildren to visit and enjoy the land from which our food comes. He believed that we can embed a love of nature in the way in which we plan and design new buildings and landscape.

We seized the chance to urge him to go further. We want him to ensure that, post-Brexit, payments to land managers include the requirement to provide





From Duty Point tower where the coast path should run, looking east to Castle Rock and Rugged Jack. Photo: © Martin Richard Phelan, Creative Commons Licence.

greater access for all.

Gove accepted that the £3 billion which is currently paid to farmers and land managers should be directed to providing public goods. Of course, that must include provision for better public access.

A cold welcome

Natural England (NE) has consulted the public about the route for the England Coast Path and adjoining access land between Minehead in Somerset and Combe Martin in Devon.

The South West Coast Path national trail is currently forced inland on a road instead of following the coast around the prominent Duty Point.

The society has backed the Ramblers, the Exmoor Society and the Exmoor Local Access Forum in calling on NE to grab this chance to create a truly coastal path on the north Devon coast at Lee Abbey, a mile and a half west of Lynton.

We have argued that walkers are severely disadvantaged by being pushed inland and that NE has a legal duty to 'strike a fair balance' between the interests of the public and landowners when determining the route of the England Coast Path.

NE has claimed that the land between Lee Abbey and the sea is used as park or

garden and should therefore be excepted from the new coastal-access rights and that the public would have an impact on the campsite there.

The website for the Lee Abbey Christian Community, across whose land the path should run, says 'We offer a warm welcome to everyone'—which is rubbish when people are banned from enjoying one of the best coast walks in Devon.

Seizure of Haven Green

The Friends of Haven Green, Ealing, and the society are angry that the environment secretary has approved a retrospective application from Ealing Council to use part of Haven Green common as a 'cycle hub' (bike park), and to deregister 188 square metres of the common. The decision follows a four-day public inquiry held earlier this year.

Before building the hub Ealing Council should have obtained ministerial consent under section 38 of the Commons Act 2006. Instead it sought to legitimise the unlawful works by applying to deregister the land under section 16 of the 2006 act—without offering any exchange land.

The Department for Environment, Food and Rural Affairs' common land consents policy states that permission for deregistration where no replacement land



Bike park on Haven Green common.

is offered will only be granted in exceptional circumstances, and only if there is a compelling reason why it is not possible to provide exchange land.

The objectors argued that the hub impeded access and obstructed views, and that there were no compelling reasons why exchange land could not be provided.

However, the inspector, Alan Beckett, dismissed the objections and considered that the loss of this common 'would not have any significant adverse effects' on the public and the neighbourhood—a perverse and depressing result.

Llandegley turbines

We are dismayed that Hendy Wind Farm Ltd has appealed against Powys County Council's refusal of planning consent for seven wind turbines near Llandegley Rocks (OS summer 2017 page 10).

We have urged the Planning Inspectorate to reject the appeal because of the devastating effect the turbines would have on people's enjoyment of this lovely area.

We have also argued that the development could be unlawful since it is proposed to site at least four turbines on land which was inclosed in 1885 under an inclosure award. This gave the public a right of 'enjoying air exercise and recreation' and decreed that no injury shall be done to the land.

Pull the plug

Still on wind turbines, we have objected to plans by Zephyr Investments Ltd to extend to 31 March 2027 the life of the 12 wind turbines on common land at Kirkby Moor and High Lowick, Cumbria.

In 2015 South Lakeland District Council refused permission to replace the turbines with six larger ones and now the developers want to keep the existing ones after the permission expires in 2018.

The turbines are a severe intrusion in a wild landscape, highly visible from many directions, and in particular from the Lake District National Park, and when seen against the background of the park. Since the original consent was granted the park has been designated a World Heritage Site making its setting even more important.

Our AGM

We held our AGM in London on 6 July with 36 members of the society present.

Chris Beney and Peter Newman stood down from the board. The chairman Graham Bathe thanked them on behalf of us all. Chris had been a trustee since 1997 with a vast range of experience and attention to detail—nothing got past him in our financial and legal papers, where accuracy is all important. Peter had served since 1986 and brought practical experience of path work and a care for our less exciting but necessary organisational management.

Left to right: Chris Beney, Peter Newman and Graham Bathe.



Graham gave them pens made, appropriately, of ancient and durable bog-oak. Happily, they continue to be local correspondents. In their places we elected Hilary Hunt and Mary Traynor (see below).

After the formal business Becky Waller of the Friends of Dorchester and Little Wittenham Open Spaces in Oxfordshire spoke about the group's campaign to claim greens and public paths, and protect a scheduled ancient monument, the Dyke Hills, on land which has recently been fenced by a new owner.

Graham Bathe talked about the society's unique collection of 1,083 glass slides which he had catalogued. They are held by the Museum of English Rural Life in Reading.

New trustees

For the first time, the numbers of men and women on our board of trustees are equal following the election at our AGM of Hilary Hunt and Mary Traynor.

Hilary took her first photo, as a child, of a blocked footpath, and the crusade for



Hilary on a bridleway at Loose in Kent.

rights of public access has been in her blood ever since.

She has a long experience of campaigning and lobbying, from working in industry and in non-governmental organisations such as Amnesty International and Voluntary Services Overseas. She has served on national and local committees

dealing with human rights, education and neighbourhood plans.

Mary Traynor is our local correspondent for South Lakeland District in Cumbria and has walked the Lakeland fells for 40 years. She has particular interests in



Mary on her beloved Lakeland fells.

communal landownership, public access and nature conservation. She is employed as the executive editor of the *Journal of Experimental Botany* and has campaigned for open access to scientific literature.

New Road common

South Lakeland District Council in Cumbria proposes to reinstate Kendal's New Road common as an open space after decades of unlawful use as a car-park. The public has the right to walk and ride here under section 193 of the Law of Property Act 1925.

With the Friends of the Lake District we have for years lobbied the council to reinstate this common. The council has agreed to do so after receiving a report which alerted it to the health and safety risks of allowing the common to be used as a public car-park. However, it is coming under criticism from those who are accustomed to park here, and we are backing its excellent efforts.

Power-lines on common

Welsh ministers have approved an application under section 38 of the Commons Act 2006 from Western Power Distribution for an overhead electricity line on a south Wales common.

Environmental justice

The Royal Society for the Protection of Birds, Friends of the Earth Ltd, Client Earth and Secretary of State for Justice, the Lord Chancellor and Civil Procedure Rules Committee [2017] EWHC 2309 (Admin).

In February 2017 the government amended its rules for environmental legal cases, scrapping the fixed cost-limits on how much individuals and charities had to pay if they lost a case against a public body.

This change made it harder for people to go to court to protect the environment. Liability for the other side's costs had previously been capped at £5,000 for an individual and £10,000 for companies in environmental judicial review cases.

Challenged

The change in rules was challenged in the high court by three environmental organisations, with our support. The judgment, in their favour, should mean that a claimant can have certainty about the level of costs when obtaining permission for judicial review.

Mr Justice Dove ruled that any cost-cap hearing should be held in private at the start of the case so that claimants no longer have to reveal their private financial details in open court. He considered that the rules needed clarification and amendment to bring them within the law.

The line with 16 poles will run for more than a mile across Mynydd Llangeinwyr common, the upland between Cwm Garw and Cwm Ogwr Fawr about six miles north of Bridgend.

We said this would be an eyesore and would spoil the enjoyment of walkers and riders who have rights on this wild, open common—but to no avail.



Northampton's threatened open space. Photo: John Beswick.

Valued Northampton space

We have objected to Northampton Borough Council's plan to dispose of open space at Lancaster Way in Northampton (pictured above). The council has advertised its intention to sell the land and is required, under section 123 of the Local Government Act 1972, to consider any representations.

The council wants to use the open space as an access to adjoining residential development. Using information from local member John Beswick we have argued that there is an alternative access which saves the much-loved open space.

Commercial abuse of parks

The government has responded to the House of Commons' Communities and Local Government Select Committee report into the future of parks and green spaces, for which we put in evidence last year. We called for a statutory duty on local authorities to provide, monitor, manage and maintain parks and open spaces but neither the committee nor the government has adopted this proposal.

We remain concerned about the increase in events being held in parks and the adverse impact these have on the local communities. While the government has agreed that the authorities should consult before charging for specific events and exclusive use of a park, there is no requirement for authorities to do this.

In July, despite strong objections, Lambeth Council gave blanket approval to a 110-day schedule of music festivals and other events on the 35 hectares of Clapham Common which it owns.

The government has established a task force of experts (not including the society) the Parks Action Group, and we hope that it will address the crucial issue of commercial degradation of parks. □

Jack Candy, 1921-2017

We are sad that Jack Candy, champion of community heritage and open spaces in Southampton, has died aged 95.

Born in Swaythling in Southampton in 1921, Jack started work at the age of 14 as an apprentice toolmaker in the works in Woolston which produced the Spitfire fighter. Along with hundreds of other Sotonians, he continued to play his part in the production of Spitfires throughout the height of the Blitz. After the war, he moved to Follands, then to De Havillands and in 1961 into the fast-growing computing industry, at IBM in Hursley.

Jack was elected city councillor for Sholing ward in 1971. He served in this role for 17 years, becoming the 764th Mayor of Southampton in 1986, following the 762nd mayoralty of his wife Irene. He started as a Labour councillor then switched to independent.

Jack and Irene shared a strong sense of community, and this was the foundation of a long and happy marriage,

with four children, four grand-children and one great grandson.

Jack championed Southampton causes and assisted fellow citizens successfully to navigate local-authority procedures long after he ceased to be a councillor.

The City of Southampton Society (COSS) and the Society for the Protection of the Parks and Open Spaces of Southampton (SCAPPS) benefited enormously from his determination and tireless activity in safeguarding the heritage and environment of the city.

Fountain

Singlehandedly, Jack raised over £70,000 for the construction of the Queen's Peace Fountain in Andrews Park in the city centre, which was completed in 2001. Sadly, Irene did not live to see it finished.

The fountain was the location of a memorial ceremony of Jack's life on 1 September. The Mayor of Southampton spoke of Jack's many years of notable civic activity; his daughter Fiona, revealed the fine chorister, craftsman, family man, and poet; Arthur Jeffery, chair of COSS and SCAPPS, reminded everyone of Jack's considerable achievements in protecting public open spaces. A section of Southampton Choral Society provided live music for the event.

Jack was a long-standing member and supporter of the OSS, serving as our Southampton local correspondent from 1999 to 2012. He has generously left us the residue of his estate. He will be widely missed.



Path diversions: say when

A chance comment by our local correspondent Peter Newman on a public path diversion order has led to the Department for Environment, Food and Rural Affairs (Defra) telling the Planning Inspectorate (PINS) to change its policy on diversion orders.

Peter opposed the diversion of footpath LZ3 at Lyonshall, near Leominster in Herefordshire, under section 119 of the Highways Act 1980 and lost following written representations to inspector Alison Lea (*FPS/W1850/4/16*, 15 Aug 2016).

Peter observed that, in its guidance to order-making authorities, PINS said ‘if you do not certify that works on the new route have been carried out—both routes will remain in existence indefinitely’, but the Lyonshall order did not state when the certification would occur.

Concluded

When we looked more carefully at section 119, we concluded that, where an authority allows for certification of the new route, it is the *old* route which is extinguished on the issue of the certificate, whereas the new route must come into effect on a date specified in the order. We said to PINS that the Lyonshall order was defective, and should not have been confirmed by the inspector. We sought an assurance that the requirement would be taken on board in future.

PINS refused to act on our complaint (against its own guidance to authorities), so we wrote to Defra. To its credit, Defra accepted that the requirements of section 119 were clear, and issued new

instructions to PINS. Defra has now confirmed that, irrespective of works to be carried out, orders should specify an actual date when the new route will come into effect. The certification of works relates only to the date on which the old route will be extinguished. If no certificate is issued, the old route will continue to exist, alongside the new route. In short, the purpose of certification is to enable the old route to be stopped up because the new route is fit for use, not to enable the new route to ‘go live’.

Modification

Defra has further confirmed that it is within the inspector’s power of modification to insert a date for the coming into effect of a new route and that such a modification would not need to be advertised.

Unfortunately, Defra did not write to order-making authorities to advise them of the change of policy, and some authorities have continued to make defective orders. And we think that Defra is wrong to insist on an ‘actual date’ for commencing the new route, which is hard to predict if an order is subject to delay before confirmation. We believe that a ‘date as may be specified in the order’ (s119(1)(a)) can be a date which is derived from the date of confirmation—such as 12 weeks after that date. Defra has yet to opine.

We are grateful to Ramblers’ member Pete Bland for pointing out that order-making authorities do not have a discretion whether to employ the certification process—they must do so ‘where it appears ... that work requires to be done to bring the new site of the [path]

into a fit condition for use by the public' (s119(3)).

In our view, if the new path is not physically in existence at the date on which the order is made, and work still requires to be done to make it fit for use, the authority must allow for certification of the new path before the old path is extinguished. This will impose additional costs, because notice of the certificate must be published in addition to notice of confirmation of the order (Highways Act 1980, schedule 6, paragraph 4A).

Fix my street

Our Norfolk local correspondent Ian Witham is reporting path problems through the 'Fix my street' website.

This generates a direct response from the authority with a number, enabling him to track the response, and to see other reports and judge how long the authority is taking to fix the problems.

Forced withdrawal

Bedford Borough Council has been forced by our local correspondent Brian Cowling to withdraw proposals to divert 13 footpaths

Brian objected to diversion orders in the parishes of Ravensden, Thurleigh and Wilstead because they were flawed. The council had used a map to the scale of

Wilstead footpath 8, obstructed and threatened with closure. Photo: Brian Cowling.



1:5,000 instead of the required 1:2,500.

He also considered they were against the public interest. For instance, the council was proposing to divert Wilstead footpath 8 instead of taking enforcement action against buildings which had been constructed across the path. The council intends to remake the orders, and Brian has warned it that he will object again.

Crime closure

We have urged Wycombe District Council in Bucks not to impose a public spaces protection order (PSPO) on High Wycombe footpath 80. The council wishes to close the path because it considers it



High Wycombe footpath 80.

to be subject to crime and anti-social behaviour.

The path is part of a long route through the town centre and this section is enjoyed as a short cut between main roads.

The alternative is alongside busy roads, requiring walkers to use footways which are often obstructed with rubbish bins.

We say that closing the path will not eliminate the alleged problem but merely push it elsewhere while penalising legitimate users. The council should make the path more welcoming.

We do not believe the legal tests for the PSPO are met. We await the decision of the cabinet member for community.

Reviews



Back Roads through Middle England, from Dorset to the Humber along the Jurassic stone belt by Andrew Bibby (Gritstone Publishing, £13.95).

This describes Andrew's eight-day bike ride across England, mostly on minor roads, following the line of Jurassic limestone. He started in Burton Bradstock in Dorset and headed north-east to Winteringham in North Lincolnshire.

Andrew's oolitic odyssey took him through towns and countryside which are rarely visited in outdoor guides, with fascinating insights along the way. Rather than give a blow-by-blow account of his journey he focuses on various issues in selected places. For example, in Powerstock, (Dorset) he considers affordable housing; in

New data-protection law

We shall be reviewing our policies and practices in relation to data protection to ensure that we are compliant with the new General Data Protection Regulation which takes effect in May next year.

Naunton, (Gloucestershire) quarrying; at Minster Lovell (Oxfordshire) the Charterville Allotments, and in Branston (Lincolnshire) agribusiness.

He does not stick to the guidebook towns but he also ventures into Corby new town in Northamptonshire and looks at landownership there. The book is well indexed and referenced.

Peak District Boundary Walk, by Friends of the Peak District, £10 (www.friendsofthepeak.org.uk).

This 188-mile walk around the edge of

the Peak District National Park was devised by the Friends of the Peak District. It uses public rights of way, tracks and quiet lanes and closely follows the boundary which is little changed from

Extra mile

Our general secretary has been short-listed for the *Great Outdoors* magazine's new 'extra mile' award for her work for the society and the Ramblers. You can vote online (<http://bit.do/dPwmX>) before 15 November 2017.

that identified by campaigners for the national park nearly 90 years ago. The walk is divided into 20 sections. The book highlights points of interest. It describes the diversity of the landscape around the park, and demonstrates the importance of protecting the Peak District's setting as well as the park itself.

Blue plaque which our member Jerry Pearlman placed on his cottage in the Yorkshire Dales village of Stalling Busk. This marks an important meeting which the Ramblers held here in August 1996 to draft a bill forming the basis of the Countryside and Rights of Way Act 2000. The plaque was unveiled by Janet Street-Porter on 7 October 2017.



NEW BOOK ON PUBLIC PATHS



A profusely-illustrated exploration of the origins of ancient tracks, droves, bridleways and footpaths which make Britain unique.

OTHER OSS PUBLICATIONS
STILL AVAILABLE:

Common Land; Village Greens;
Saving Open Spaces

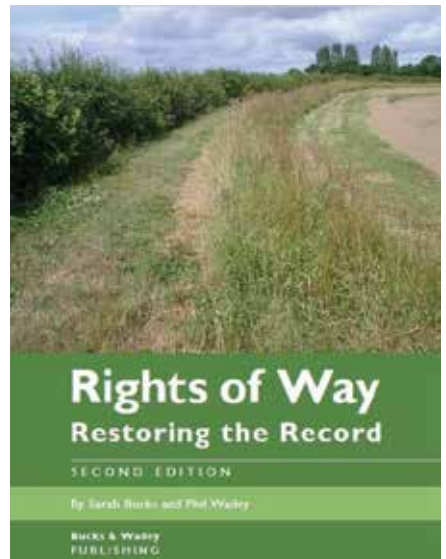
£5 EACH INCLUDING P&P, or
BUY ALL FOUR FOR £12

Further details and order online at
<http://www.oss.org.uk/what-we-do/publications/>

RESTORING THE RECORD – 2nd edition

The second edition of this invaluable reference-book covers how to identify routes, the key sources of evidence of historic ways, where that information is located and what it can tell us, and how to adopt a systematic-research method.

The second edition is available to OSS members at a discounted price of £27 inc p&p; please reference OSS when ordering. For further details or to order, visit <http://www.restoringtherecord.org.uk/>



The Open Spaces Society was founded in 1865 and is Britain's oldest national conservation body. We campaign to protect common land, village greens, open spaces and public paths, and your right to enjoy them. We advise local authorities and the public. As a registered charity we rely on voluntary support from subscriptions, donations and legacies.

Officers and Trustees

Chairman: Graham Bathe

Vice-chairman: Phil Wadey

Treasurer: Steve Warr

Trustees: Diane Andrewes, Hilary Hunt, John Lavery,
Jean Macdonald, Mary Traynor

**General secretary
and editor:**

Kate Ashbrook

Case officers: Hugh Craddock, Nicola Hodgson

Subscription rates

Individuals: ordinary £33 or £3 per month / joint ordinary £50 / life £660.

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

National organisations; district and borough councils: £165.

County councils and unitary authorities: £385.

Registered in England and Wales, limited company number 7846516

Registered charity number 1144840



Open Spaces Society, 25a Bell Street,
Henley-on-Thames RG9 2BA

Tel: 01491 573535

Email: hq@oss.org.uk

Web: www.oss.org.uk

£4