Open Space

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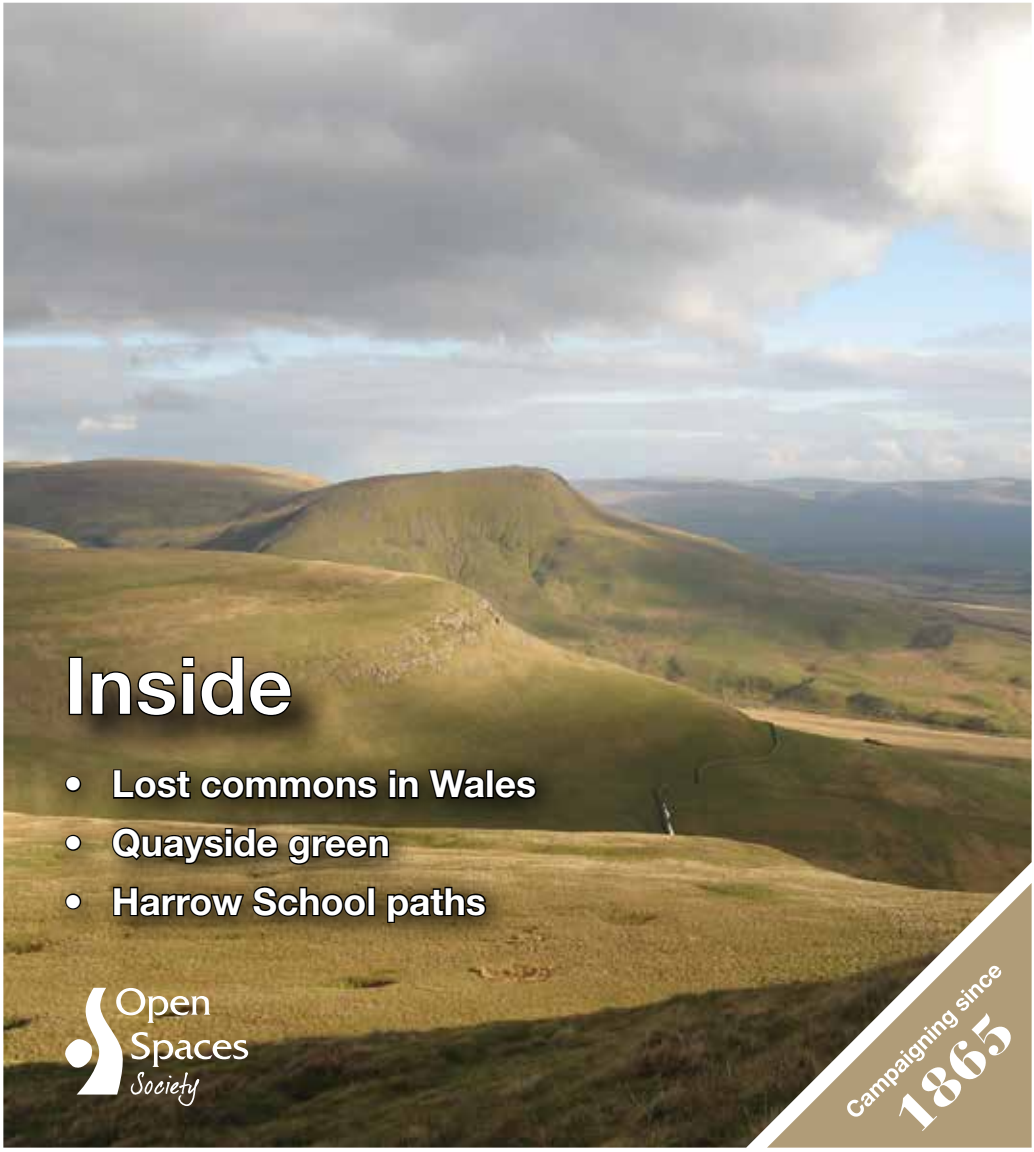

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Open Spaces Society

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Open Space

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Cover story

Roman Fell seen from Murton Fell in Cumbria. This forms part of the 17 square miles of common land threatened with deregistration by the Ministry of Defence. The society, with local amenity and graziers' organisations, has objected to Cumbria County Council, the registration authority (see page 7). Photo: Kate Ashbrook.

Shape of the nation

The 870-mile Wales Coast Path was the ambitious legacy of Rhodri Morgan, the former first minister of Wales who died in May. Now we can walk ‘the shape of the nation’; the path has brought pleasure to thousands, and millions to the Welsh economy.

This path is a pioneer. As English and Welsh laws diverge, Wales has focused commendably on sustainable development and well-being. But there are worrying signs as it casts off from Westminster.

Foundations

Wales is shifting the foundations of our designated landscapes, the three national parks and five areas of outstanding natural beauty (AONBs) which cover one quarter of the land area.

In 2014, the government appointed a panel of respected academics and practitioners, Terry Marsden, John Lloyd Jones and Ruth Williams, to undertake an independent review of these landscapes, to ensure that they are ‘best equipped to meet current and future challenges while building upon their internationally recognised status’.

A year later, after receiving much evidence, the panel made 69 recommendations—all within the framework and spirit of the founding National Parks and Access to the Countryside Act 1949. The recommendations give greater strength to the purposes and duties of the parks and AONBs—‘factories of well-being’—and recognise their contribution to recreation and enjoyment.

Bizarrely, the government set up another group which, 18 months later, produced yet another report, undermining Marsden.

Despite the government’s statement of commitment to designated landscapes in the foreword there is no mention of the parks’ purposes of protecting natural beauty and promoting enjoyment, nor of the Sandford principle that conservation prevails when there is irreconcilable conflict—vital as a last resort when inappropriate tourism developments are proposed (all too likely).

The actions are woolly and jargon-ridden. Search for old-fashioned, unambiguous words which describe designated landscapes and you will be disappointed.

Invention

The 1949 act was indeed a Westminster invention but it has stood the test of time. We must persuade Welsh Assembly Members that Marsden’s recommendations are essential to secure the future of the designated landscapes for the people of Wales and beyond.

For the Welsh countryside has provided far-reaching inspiration. Rhodri Morgan contemplated the Wales Coast Path as he walked near his Ceredigion caravan. Theresa May lit on the snap election while on holiday in Snowdonia.

I know which idea is the better. **KJA**

Taking action

Rescuing Welsh commons

On 5 May it became possible for the public to claim 'lost' commons in Wales. The Welsh Government has, at last, implemented a portion of part 1 of the Commons Act 2006.

Re-registration is already possible in nine 'pioneer' areas of England (Blackburn with Darwen, Cornwall, Cumbria, Devon, Herefordshire, Hertfordshire, Kent, Lancashire and North Yorkshire).

Now in Wales anyone can apply to register land which was wrongly omitted from the register, but anyone can also apply to deregister commons which they believe to have been wrongly registered.

Why register?

Once it is registered as common, land is protected by the Commons Act 2006 from development and encroachment. The public has the right to walk, and possibly to ride, there.

All common land had to be registered during the three-year period allowed by the Commons Registration Act 1965. The act defined common as 'land subject to common rights … or waste land of the manor not subject to rights of common'.

In 1978, the court of appeal decided, in *Box Parish Council* v *Lacey* [1979] 1 All ER 113, that waste land of a manor must still be in the ownership of the lord of the manor at the time the registration was determined. This resulted in the cancellation or withdrawal of many applications for registration of commons which were not subject to rights and were not still owned by the lord of the manor.

This decision was reversed in 1990 by the House of Lords in *Hampshire County Council* v *Milburn* (1991) AC 325—too late to save the lost commons. The Commons Act 2006 gives us a chance to save them now.

We urge our members in Wales to inspect the common-land register held by their registration (unitary) authority and note the provisional registrations which did not become final. Information sheets on our website explain the process. The essentials are to read, if available, the commons commissioner's decision letter to see whether any cancelled or withdrawn registration is now eligible for re-registration. If it was, you should research whether the land was waste of the manor at the time of the application, and you must be satisfied that the land is still open, uncultivated and unoccupied (unoccupied refers to land use not tenure).

Once you have this evidence you can apply to the registration authority on the form which it provides (CA13WG-E).

Deregistration

Since the act also allows landowners to apply to deregister commons, you should ask your registration authority to inform you of any applications in your area. You should object if you consider that the applicant has not proved an error at the time of registration. Contact the society if large or significant areas are affected.

It was unfortunate that the Welsh Government introduced the new measures with minimal notice and no opportunity for us to influence the policy, regulations or guidance. We have raised our concerns with Assembly Members and officials. ❐

Commons win EU protection

Thanks to lobbying by the society, the government has decided to apply EU protection to commons.

On 16 May, new regulations took effect in England which require the government to apply environmental impact assessment (EIA) to common land, giving it greater protection.

In future, works on common land will have to be assessed against the requirements of EIA. A series of EU directives sets out the process whereby, if a development proposal is likely to have a significant effect on the environment, it must be assessed to determine whether its impact demands an EIA. If the project exceeds certain thresholds (for instance, if it involves more than two kilometres of fencing in a national park) it must be assessed (see OS spring 2017 page 8).

Until now, the Department for Environment, Food and Rural Affairs (Defra) had argued that it was sufficient to obtain consent for works on common land under section 38 of the Commons Act 2006, and that a separate assessment against the requirements of the EIA was not necessary. Now, if the proposal exceeds the thresholds, the applicant must also apply for EIA screening.

Little Asby Common in the Yorkshire Dales National Park. Photo: Friends of the Lake District.

Says our case officer Hugh Craddock: 'We are delighted that the government has seen sense and applied the requirements of EIA to commons. There has never been any lawful excuse for exempting commons from EIA, and England has been in breach of the EIA directives for decades.

'Now, proposals for extensive fencing on commons will be subject to the same comprehensive assessment process as on any other land.'

Contested

We had already contested the environment secretary's determination of applications for new fences on common land without consideration of the requirements of EIA, and we said that Defra was heading for a legal challenge if it did not change its approach. We responded to Defra's consultation on amendments to domestic implementation of EIA in agriculture and called for these changes to be made. We are very pleased that the new regulations do exactly that.

But we are sorry to see that Defra has not yet explained how the requirement for EIA will fit in with the assessment of applications for works on common land. We say that applicants should have to clear the screening process *before* applying for section 38 consent. It would be outrageous if applicants, objectors and the secretary of state had to waste time on a section 38 application, only to find that the entire project had been called in for a full EIA assessment. ❐

Case File

Quayside green

T W Logistics Ltd v *Essex County Council [2017]* EWHC 185 (Ch), 8 February 2017.

The high court has upheld the registration of 1,140 square metres of Allen's Quay, Mistley in Essex, as a town green and, in doing so, raised some interesting issues.

Ian Tucker, the second defendant, applied in 2010 to Essex County Council, the first defendant, to register Allen's Quay as a town green under section 15(3) of the Commons Act 2006. Allen's Quay is part of a larger series of quays in Mistley, many of which are busy with maritime and commercial traffic. The application was triggered by the erection of a fence along the quayside by the owner, T W Logistics Ltd (TWL), in 2008.

As of right

The applicants argued that their use of the land for over 20 years had been 'as of right', ie without force, permission or stealth, for 'lawful sports and pastimes'.

The council appointed Alun Alesbury of counsel as an inspector to advise on the application, and he reported in October 2013 following a public inquiry. He recommended that the application be granted for the land which lay between the quayside and a public road.

In July 2014, the council endorsed the recommendations and registered the land.

TWL challenged the registration under section 14(b) of the Commons Registration Act 1965. The case was heard in the chancery division by Mr Justice Barling, whose judgment runs to 78 pages.

The claimants contested the council's decision to grant the application on a number of grounds. They argued among other things that use of the land had not been as of right, commercial use of the land being incompatible with use for lawful sports and pastimes; and registration was incompatible with the statutory regulation of a port.

Moreover, TWL criticised the council for seeking to uphold its decision to register, arguing that it should have taken a neutral stance. On this point the judge said, without hearing the full argument, that he was 'inclined to the view' that the council's quasi-judicial role did not prevent it from fully defending its decision 'where appropriate'.

The judge considered the meaning of use as of right and whether signs on the quay showed that use to be contentious. However, many of the 'private' signs were exhibited near the passage to the next adjacent quay. They would make an impression on a person passing that way, rather than suggesting that they applied to the openly-accessible Allen's Quay. Indeed, the judge found that many visitors to the quay would never come within reading distance of the signs.

Incompatible commercial use

TWL said that commercial use of Allen's Quay had displaced recreational use during the 20-year period, and was incompatible with it.

Both the inspector and the judge relied on the Redcar case (see *OS* summer 2010 page 3) for assistance. Here the supreme court ruled that there was and could continue to be sensible co-existence

between the golf played by licensees of the owners and the recreational activities of local inhabitants. Barling J considered that such was the case at Allen's Quay too.

Having reviewed the witness evidence of commercial activity on Allen's Quay he was confident that witnesses for both parties were not far apart: there were long periods when little commercial activity took place, some spells with more sustained activity (eg when a ship was unloading), but rarely if ever any occasion when the activity might be sufficient to discourage recreational use. He concluded that there was no incompatibility: instead, there was 'sensible and sustained co-existence between the two groups of users'.

Novel

TWL explored novel territory by arguing that, once the land was registered as a green, commercial use there would be contrary to the Victorian statutes which protect greens (section 12 of the Inclosure Act 1857 and section 29 of the Commons Act 1876) and therefore that the land should not be registered. The judge declined to hold that Allen's Quay could not be registered because of the potential illegality of TWL's commercial activities after registration, since they did not interrupt the use as of right during the qualifying period.

TWL argued that registration would put it in an impossible position in reconciling public rights or statutory obligations to ensure health and safety. The judge ruled that TWL had successfully reconciled the competing demands during the 20-year period, and that the fence, which had already been erected near the quayside following representations from the Health and Safety Executive, could be replaced by a compromise, low-level railing through which people could climb but

Our legal fund

Thank you to everyone who has given to our appeal to replenish our legal fund. Five years ago we set up the fund and raised a remarkable £15,000. That has been spent on financing members' legal action on public paths, commons, greens and open spaces. These cases have helped to provide a solid body of useful decisions as well as saving some of those places we hold dear.

Already we have raised over £9,000 from our latest appeal. It is not too late to make a donation. You can do this via our website or by sending a cheque to the office.

Allen's Quay village green with the fencing in place. Photos: Nancy Bell (left) and Ian Tucker (right).

which would still protect unwary members of the public.

While we welcome the decision, we have some concern about the findings in relation to criminal liability under the Victorian statutes.

Routine

The judge concluded that the port owner would not be criminally liable because its routine commercial activities did not interfere with recreational use during the 20-year period, and so would be no more likely to following registration.

It is not clear whether the judge considered that driving and parking heavy-goods vehicles on a green would never offend against the Victorian statutes, or only that they would not do so where the same things had been done during the qualifying period.

Breached

If the judge was saying that the test of whether an activity has breached the criminal threshold under the Victorian statutes can be determined by referring to the 20-year period, that must mean that the threshold is pitched at different levels on different greens, rendering the criminal law uncertain.

We understand that the claimant is seeking leave to appeal against the decision. While clarification of the law may be helpful, we hope the green will be safe.

The fight for Trimpley Green

We have objected to an application to deregister part of Trimpley Green, common land two miles north-west of Kidderminster in Worcestershire. The land adjoins a road and is crossed by a driveway.

The application was made in July 2016 jointly by the owners of two houses which are next to the common. They claim that the land in question forms part of their curtilage and therefore is eligible to be deregistered under the Commons Act 2006.

Prove

To be successful, the applicants must prove that the land has been part of the curtilage of the adjacent dwellings since 1968 when the land was registered and has remained so ever since. We have seen no evidence of this. Local people remember this part of the common when it was registered and say that the driveway was put down only in the 1970s—although we can find no trace of any permission to enable that to be done on the common.

The applicants think that because they manage land as an extension of their gardens it should cease to be part of the common. We disagree, as do many local people. The application will be determined by Worcestershire County Council, the commons registration authority. ❐

Trimpley Green, Worcestershire: the common land shown here is under threat of deregistration. Photo: Carole Gammon.

War at Warcop

In Cumbria, the society is fighting a massive and unprecedented threat to 17 square miles of common land.

The Ministry of Defence (MoD) has applied to deregister and essentially privatise Hilton, Murton and Warcop commons in Cumbria. Together they comprise about one per cent of England's common land.

The threatened commons are to the north-east of Appleby-in-Westmorland in the North Pennines Area of Outstanding Natural Beauty.

Largest

This threatens to be the largest single enclosure since the enclosures of commons in the eighteenth and early nineteenth centuries.

Deregistration of the commons would bring to an end the long tradition of upland commoning here. The farmers who used to have grazing rights over this land could be denied the opportunity to graze their stock. This would be devastating for the farming community.

The land would lose the protection against encroachment and development afforded by the Commons Act 2006, whereby the environment secretary must give consent for works.

In March 2003, following a public inquiry held in Appleby in 2001, all the grazing rights on the commons were bought by the MoD, the landowner, and extinguished. In return the MoD created some additional access opportunities on Murton Common. It undertook not to deregister the commons and to create new common rights to ensure that the commons would exist in perpetuity.

In November 2014, the MoD reneged on the undertaking. The defence minister 'restructured' it so that MoD is no longer committed to its promise.

It has applied for deregistration under paragraph 2 of schedule 3 to the Commons Act 2006. The MoD argues that the land and common rights were finally registered under the Commons Registration Act 1965; 33 years later the rights were extinguished and the land was vested in the Secretary of State for Defence. The MoD claims that, as a result of the land and rights being vested in the same body, the land ceased to be common—the very outcome which the undertaking was supposed to prevent.

Contravene

The society, the Federation of Cumbria Commoners, the Foundation for Common Land, the Friends of the Lake District and the Hilton Commoners' Association have objected, arguing that if Cumbria County Council approves the application it would contravene the Commons Act 2006. The future of these magnificent commons would be at severe risk. The battle is likely to rage for some time. ❐

From High Cup Nick: the threatened Murton Common is the left-hand slope.

Far & Wide

Harrogate Stray saved

Harrogate Borough Council has dropped its plans to extend the commercial use of Harrogate Stray (spring *OS* page 10). We objected to its proposal to extend and expand the use beyond 35 days in the year and 3.5 hectares at any one time.

Fortunately the consultation showed no clear majority in favour of change.

Money for access

Before the election we urged all the political parties to pledge in their manifestos that the new post-Brexit funding scheme for agriculture would provide public benefit in return for public money—and we shall continue to press for this now the election is over.

We want to see improved public access—by paths and freedom to roam—which will support the local economy and people's health and wellbeing.

A well-maintained path near Melbourne, Leicestershire. Photo: Barry Thomas.

We have said that financial support should be available for landowners who give additional access, for example new paths to link existing public rights of way, new access land and access points, ampler paths and mown paths along field edges.

There must also be stronger enforcement so that, when a landowner abuses the law on paths, his or her grant is reduced and the deduction used to fund more and better access.

Threat to Leigh Common

We have objected to plans by Gleeson Developments Ltd to strike part of Leigh Common, at Wimborne in Dorset, from the common-land register.

The developers want to build an access-road across the common to serve a new housing development on land south of Leigh Road which crosses the common. They also want to widen the existing tarmac footway across the common to add a cycleway.

In March the developers applied for consent under section 38 of the Commons Act 2006. We objected because the works would suburbanise a rural common and create an unacceptable intrusion. Moreover, they would conflict with the public's rights to enjoy the common for quiet recreation.

Shortly after submitting that application the developers applied to Dorset County Council, the commons registration authority, to deregister that part of

Legacies

Generous legacies to the society have made an enormous difference to us. They enable us to continue and, indeed, expand our vital work.

If you would like to remember the society in your will, please look at our website or ask us for a leaflet.

Leigh Common so that it was no longer common land. They claimed that the land was wrongly registered under the Commons Registration Act 1965.

We objected to this too, pointing out that there is no evidence that any error was made when the common was registered.

The developers are obviously determined to damage the common in order to achieve their aims instead of designing their proposals to accommodate it. We shall continue to object.

Hurrah for Herts

Nine commons registration authorities are pioneering the full implementation of part 1 of the Commons Act 2006. This means that their registers of common land and town and village green should be reviewed, and the authorities themselves have a power to make proposals for amendments to the registers in the public interest.

Regrettably, the pioneer authorities have been slow to employ these powers, with only a handful of amendments made so far—even though, in most cases, the power to make proposals expires at the end of 2020. The society therefore welcomes Hertfordshire County Council's plan to revisit the Broxbourne and Hoddesdon Open Spaces and Recreation Grounds Act 1890. This was a private act which recorded and dedicated rights of way over the Broxbournebury estate, set out new recreation grounds, and identified the waste and common within the estate.

Nearly all these wastes were provisionally registered as common land, village green or both, under the Commons Registration Act 1965. But when the registrations came before the commons commissioner, no one came to the hearings with a copy of the 1890 act and the deposited plan. Some of the registrations were cancelled, putting the land at risk of unlawful enclosure. Now, the county council has brought forward two proposals to put the cancelled registrations back on the register, which the society strongly supports.

We should like to see Hertfordshire and other pioneer authorities make more amendments to rectify the flaws in the 1965 act. Time is running out fast.

Fighting land swaps

We have opposed two applications to swap common land under section 16 of the Commons Act 2016. One is at Therfield Heath, near Royston in Hertfordshire, the other at Gorseinon near Swansea.

The Conservators of Therfield Heath and Greens wish to exchange 1.65 acres of common land off Sun Hill for the same acreage of woodland over a mile away. The exchange would enable eight houses to be built on the land at Sun Hill. We believe this land to be of value to the public, being immediately to the west of Royston and surrounded on three sides by housing making it a treasured open space. The replacement land is obviously too distant.

The threatened land at Sun Hill. Photo: Don Shewan

At Gorseinon, Persimmon Homes wants to use 1.75 acres of common for development and replace it with two acres of inferior land. The existing common is more accessible for local people and is covered in trees and other vegetation

This view of Llandegley Rocks would have been obliterated by the turbines. Photo: Diana Hulton.

whereas the replacement land is hidden away and is a featureless field.

Both applications are to be determined by public inquiries.

Turbines turned down

Powys County Council's planning committee has rejected plans by Hendy Wind Farm Ltd for seven wind-turbines, 110 metres high, close to Llandegley Rocks. This beauty spot, five miles east of Llandrindod Wells, is visible from miles around. There were 55 objections.

Geoff Sinclair of Environmental Information Services spoke on behalf of many objectors at the planning meeting. The councillors refused the application because it would be an unacceptable intrusion into the landscape, endanger its scheduled ancient monuments, and have a significant effect on users of nearby public paths.

We pointed out that the development would encroach on registered common land. The developers had applied for works on and exchange of common land but withdrew after numerous objections had been lodged.

The vast turbines would have devastated this lovely unprotected area and we are relieved by the result.

Speed limit for Bringsty

We have backed Bringsty Common Manorial Court and local residents in calling on Herefordshire Council to introduce an enforced 30-mph speed limit on the A44 road where it crosses the unfenced Bringsty Common. The current speed limit is 50 mph.

The speeding traffic endangers livestock which wanders onto the road, deterring commoners from grazing the common. It is also potentially lethal for residents using the tracks across the common to their properties.

Motorbikes speed along the A44 across Bringsty Common. Photo: Tom Fisher.

Hello and goodbye

We are sad to say goodbye to Trevor Quantrill, our financial administrator who has retired after two years with us. He has done a great job. In his place we welcome Lucie Henwood who lives in Henley. For 34 years Lucie and her husband Colin ran a traditional wooden-boatbuilding business in the town. Lucie is a trustee of the Acorn Music Theatre Company and the Henley Youth Festival and she performs with the Average Wife Band and Sam Brown's ukulele club. She enjoys boating, walking, cycling and exploring the British countryside.

Three generations of OSS financial administrators, left to right: Trevor Quantrill, Lucie Henwood and Mark Taylor (who left in 2015).

Glasbury campaign

We are supporting local members in fighting development at Glasbury, next to the River Wye in Powys, and have objected to the planning application.

The proposed 18 dwellings would destroy the playing-fields of the former Glasbury school where local people have long roamed freely. We believe the land may be eligible for registration as a village green. Footpaths are threatened too. ❐

Defra's lack of clarity

Regulations under the Highways Act 1980 and the Commons Act 2006 enable landowners to make declarations (1) to the highway authority that they do not accept any highways on their land except for those shown on the definitive map and (2) to the commons registration authority that none of their land is being used for lawful sports and pastimes. The public then has one year in which to apply to have any of the land registered as a town or village green. Landowners can also make combined statements for highways and greens.

On 1 December 2016 the regulations were amended to remove the requirement to post notices on land subject to a greens statement (but to retain it for highways statements and combined statements). This was a surprise to us as we expect to be consulted about any change to regulations. In fact landowners and local authorities were consulted, but not user groups. Nevertheless, Defra told the Secondary Legislation and Scrutiny Committee that 'even though the proposed changes do not affect the rights of users, user groups were informally consulted via a rights-of-way stakeholder group ... and they were content with the proposals'. Although it may have been mentioned at the rights-of-way stakeholder group meeting, the group was not formally consulted.

We wrote to the clerk of the committee to complain at the lack of consultation and to point out flaws in the drafting which we would have corrected had we been consulted.

The committee chairman, Lord Trefgarne, contacted the environment minister Lord Gardiner who, after making inquiries, admitted that 'there was no discussion about the regulations at the rights-of-way stakeholder group' and that the material provided by his department 'may have given the wrong impression and that it must be clearer and more exact in future' but that 'there was no intention to mislead the committee'.

Path Issues

Victory over Harrow School

The society has helped local objectors to save two public footpaths which cross part of Harrow School grounds.

Harrow footpath 57 runs between A and B on the plan below, and footpath 58 between A and G.

In 2003, the school obtained planning permission for 12 tennis courts and two all-weather (Astroturf) pitches and fencing. Harrow Council and the school ignored FP57 and the school built the tennis courts on top of the path, thereby obstructing it, and laid out pitches on either side of it.

For many years, until 2012, there were locked gates across the path at either end of the Astroturf pitches. The path is still obstructed by the tennis courts.

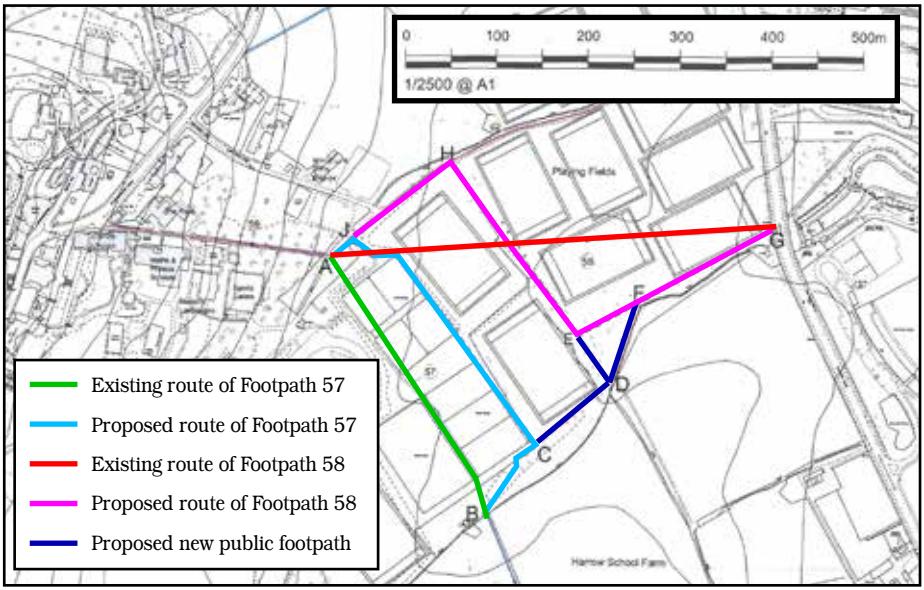
Local people complained about the interference with the footpaths at the time of the development and, in December 2003, the council wrote to the school asking it to provide 'unfettered access to all members of the public'.

Excuse

The school made the excuse that the footpaths were described on the definitive statement as 'undefined' and the council chickened out. It was not until the Ramblers revived the issue in 2009, even threatening legal action against the school, that the council began to take the matter seriously.

In about 2003 the school also put sports pitches across the route of FP58, without physically obstructing it. Meanwhile, Transport for London proposed that the Capital Ring long-distance route should

Plan of the proposed footpath diversions at Harrow School.



From point A looking south-east along the obstructed route of footpath 57.

follow FP58 but that, rather than take the route over the sports pitches, it should zigzag around the field edge.

In 2013, despite objections from the society, Ramblers, and local people, the council made two diversion orders under section 119 of the Highways Act 1980, to move FP57 around the east side of the courts (A-J-C-B) and FP58 onto the route designated as part of the Capital Ring (A-J-H-E-F-G), with two creation orders to make circular routes. There were 12 objections and a public inquiry was held in January, and reconvened in February, lasting six days in total.

Legal representation

The school was represented by John Steel QC and his junior, and the council by barrister Ruth Stockley. The objectors (with no legal representation) included Kate Ashbrook, appearing for the society and the Ramblers; five local people led by Gaynor Lloyd; and Gareth Thomas, then MP for Harrow West (this was written before the election); Harrow Councillor Sue Anderson, and Brent Councillor Keith Perrin. There were other objectors who did not appear.

The inspector, Alison Lea, heard a great deal of evidence including the story of the school's deliberate abuse of the paths over 14 years. Her decision letter was published on 20 April. In summary, her findings were as follows—

The orders were made in the interests of the school. She considered that it was expedient in the interests of the owner to divert the paths. Unless FP57 were diverted, the school would lose some tennis courts, but she noted that there had been no incidents relating to the safety of pupils or staff nor any reports of conflict between path users and spectators of matches on the courts. On FP58 the school would prefer not to have walkers crossing the pitches, although any conflict between walkers and those playing sport was limited, and the school could improve the situation with better signing.

Before considering whether the diversions were substantially less convenient to the public, Ms Lea first decided that the obstructions on FP57 were 'temporary circumstances' which she should ignore when comparing the definitive and the diversion routes. The school arrogantly stated that, given the council's support for its position, there was no prospect of any proceedings to remove the obstructions and therefore the existing route of FP57 should be assessed as if it was obstructed. If the obstructions had to be removed it would cut two holes of appropriate width in the netting so that users could cross the courts.

Ms Lea decided the planning permission

From near point G looking west to Harrow-on-the-Hill.

did not authorise the obstruction and therefore the proper comparison was between the unobstructed definitive route crossing the courts via gaps in the netting.

Although both diversions would increase the length of routes she did not believe that the additional length of either would result in the new routes being substantially less convenient to the public.

She then considered whether it was expedient to confirm the orders having regard to the effect of the diversions on public enjoyment of the paths as a whole.

Analysis

She made a full analysis of the views in both directions on the definitive and diversion routes. She noted that 'the panoramic view of the listed buildings on Harrow-on-the-Hill available from FP57 adds considerably to the enjoyment of the route' and that FP58 heads 'almost directly to the church spire'. She quoted Gareth Thomas who described a 'spectacular' vista which he did not want to have to 'enjoy from the side'. She gave weight to the history of the routes, which were shown on the Ordnance Survey map c1868, and noted that they are direct with a sense of purpose and the past.

She considered that the impact on the public's enjoyment would be 'considerable' (FP57) and 'significant' (FP58). The difficulties and conflicts referred to by the school had been overstated. She did not confirm the orders. *(Ref FPS/M5450/4/1 and 3, and 6/1 and 2, 20 April 2017)*

North Yorkshire under fire

We sent a robust response to North Yorkshire County Council's plan to create a hierarchy of the county's public paths.

The council proposes to put paths into categories to determine the level of their maintenance, with a complicated system to assign the priority to be given to each route.

We fear that those routes which are afforded low priority will be neglected and consequently less used, and they could in effect be lost even if they are not closed legally. Urban paths are likely to be better maintained than rural ones, with little attention given to paths between settlements. There is no recognition in the consultation document of the economic benefit which can be reaped from public paths

We have said that, to make the most of its resources, the council should ensure that landowners and managers carry out their legal responsibilities on the path network, and make full use of volunteers—as it already does successfully with the Lower Wharfedale Ramblers.

Six months for Kineton

In *Taking Action* in the last issue of *Open Space* (page 7) our vice-chairman Phil Wadey explained how to complain to the Secretary of State for Environment, Food and Rural Affairs if a council is failing to progress a modification-order application.

Our member Brian Lewis, who has been working with Kineton Parish Council to record a quarter-mile route at Pittern Hill in Warwickshire as a bridleway, followed Phil's advice with some success. The environment secretary has given Warwickshire County Council six months in which to determine the application.

The path runs from the B4086 road one mile north-east of Kineton, in a south-westerly direction to Longbourn Farm. Kineton Parish Council submitted the application in January 2009, supported by 26 statements from witnesses who had enjoyed unhindered use of the path for periods of 20 years and more. The route is recorded in the list of streets as a highway maintained at public expense, and until 2003 was waymarked as a public right of way.

The Kineton application route joins the B4086 road on the far side of the gate on the right. The new track and cattle-grid on the left are not on the application route. Photo: Brian Lewis.

The application joined a long backlog, and the council said that it would defer maintenance and enforcement until the status of the route had been determined.

In January 2017, the parish council asked the environment secretary to direct the council to make the order.

Deregulation Act delays

We regret that there is still no news on the timing for the introduction of the Deregulation Act 2015. Parliamentary time is needed to approve one of the regulations and Defra is preoccupied with Brexit. The rights-of-way stakeholder working group, of which our general secretary is a member, continues to meet to discuss the draft regulations and guidance.

Alan Beckett was appointed by the Planning Inspectorate to decide the matter. He recognised the scale of the task facing all surveying authorities dealing with rights-of-way issues. This application was number 28 in the planned order of work for Stratford-on-Avon district, and the whole list of applications in the county was 167.

Since it was not disputed that the application route was one to which the public has access, it would appear not to be a case which would be unduly difficult to resolve. Further delay could result in the loss of elderly witnesses. The council estimated it would take a further four to eight years before it was determined, but the parish council had already waited eight years, making that 12 years at least. The inspector did not hold it reasonable for an authority to take eight, 12 or 16 years to determine this type of application and did not 'consider it reasonable for the authority to afford this level of uncertainty to applicants'. He noted that 'it appears unlikely that a determination will be made in the near future without intervention'.

He therefore allowed a further six months.

Phil Wadey comments: 'I think this is the first direction I have seen in which the time allowed has been set at less than a year'. (*Ref FPS/H3700/14D/1, 3 April 2017*)

Valley stays happy

We were delighted when Gravesham Borough Council refused planning permission for new buildings to serve a vineyard at Meopham in Kent.

Our local correspondent, David Thornewell, objected because of the damaging effect on the landscape and on public footpaths which run between Meopham Green and Happy Valley. ❐

Reviews

Clarion Call, Sheffield's Access Pioneers by Dave Sissons, Terry Howard, and Roly Smith (South Yorkshire & North East Derbyshire Area of the Ramblers, £7.99; archival photos).

This book is a work of piety containing much of interest but leaving much relevant matter unexplored. The authors are noted campaigners and publicists for public access in the Peak District.

GHB ('Bert') Ward (1876-1957), who is the book's hero, was a pioneer of access to the moors and hills of the Peak. In 1900 he founded the Sheffield Clarion Ramblers Club, which he called 'the first working class ramblers' group in the country'. This was surely a dubious claim; and is tentatively challenged here by Dave Sissons. Ward himself rose from working-class origins to become, via the Amalgamated Engineering Union, a civil-servant conciliating in industrial disputes

Machismo

Sissons maps the coincidence of the access and Labour movements; he notes also Ward's naturism (there is a photo of him skinny-dipping) and his admiration for Edward Carpenter and Walt Whitman (both literary homosexuals devoted to the open air). This ethos sharply contrasts with the uncompromising machismo with which Ward ruled the Clarions. Unsurprisingly, given the culture of the times, women hardly figure in the club's early days, although we are told that the 14 ramblers in the club's first walk (20 miles round but of course not over Kinder) included ladies (no numbers or details given). But Ward, advertising a ramble to be held four days after WWI broke out, wrote, quaintly but firmly, 'Please to leave your caps at home and allow your hair to have a ruffle. **She** won't be there to scold you.' And as late as 1924 Ward ordered: 'None but sturdy and proven men-ramblers must attempt this walk. **Beginners must stay away**.' (Bold type above as original.) He was married himself so presumably spoke from experience, and had two children but we are told nothing of his family life and little of how and where he lived. Research in the census returns and street directories could have helped. At some point he quit Sheffield for Longshaw on its rural fringe. And there are unquantified hints of a legacy he received and the useful one he left.

Lukewarm

Despite much trespassing and much romantic blather about the spiritual values of the hills (he was an autodidact), Ward did deals to obtain temporary access to closed land; and his support for the Kinder martyrs in 1932 was lukewarm.

The book is copiously illustrated with pictures taken mostly by Clarion-member Harry Diver (1869-1941) who, lugging a huge camera for his glass plates, must have expended more effort per moorland mile than Ward ever did. Sissons says that Diver was financed by Ward in his attempt to become the first 'official Labour' councillor in Sheffield. No source for this or many other statements is given. And out of place here is Diver's lively account of a cheeky, sneaked visit to France in 1916 to see his soldier son.

Its subject makes this a fascinating book—but with deficiencies. Firm editing and efficient subediting would have made it much better. **Chris Hall**

Eric Mawer, 1926-2017

We are sad that our former local correspondent for East Devon district, Eric Mawer, has died; he was 90.

Eric worked tirelessly as our correspondent from 1995 to 2007 and for the Ramblers. He objected to path changes which were against the public interest and saved many paths from damaging diversions. These included a footpath running past the Old Rectory at Torbryan, near Newton Abbot, where he smashed the arguments of alleged privacy and security; and the obstructed Exmouth footpath 14 beside the Withycombe Brook.

Eric's career was in men's outfitting. He and his wife Margaret retired early, in 1983, and moved from London to Colyton in Devon with the intention of doing voluntary work. Eric immediately discovered that the public paths were in a dreadful state and systematically bombarded Devon County Council with vitriolic complaints. He also began to research routes missing from the definitive map.

Within three years Eric and Margaret found that their bungalow could not accommodate the paperwork and they had to move to a larger property in the village.

Among Eric's path applications was one for a route to be added to the definitive map alongside the River Coly in Colyton and adjoining parishes. This turned into a long-running saga lasting for 20 years. The two-mile path was eventually added to the map but Eric had died shortly before his triumph was confirmed.

Eric was fearless in his dealings with hostile landowners and councillors. He called himself 'a geriatric commando' as he forced his way along obstructed paths. The paths of East Devon are in a much better state now, thanks to his courage and diligence.

Come to our AGM

on Thursday 6 July 2016 at 11 am

Friends House, 173 Euston Road, London NW1 2BJ

After the formal business, Becky Waller, from the Friends of Dorchester and Little Wittenham Open Spaces in Oxfordshire, will speak on the group's campaign to win greens and public paths, and to protect a scheduled ancient monument on land which has been fenced (see *Open Space* spring 2017 page 2). Next, our chairman, Graham Bathe, will speak on the society's unique collection of magic-lantern slides.

Time permitting, members may give short talks on their campaigns. *Please let us know by **24 June** if you would like to take part*. Contact ellenfroggatt@oss.org.uk or 01491 573535.

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.

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.

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