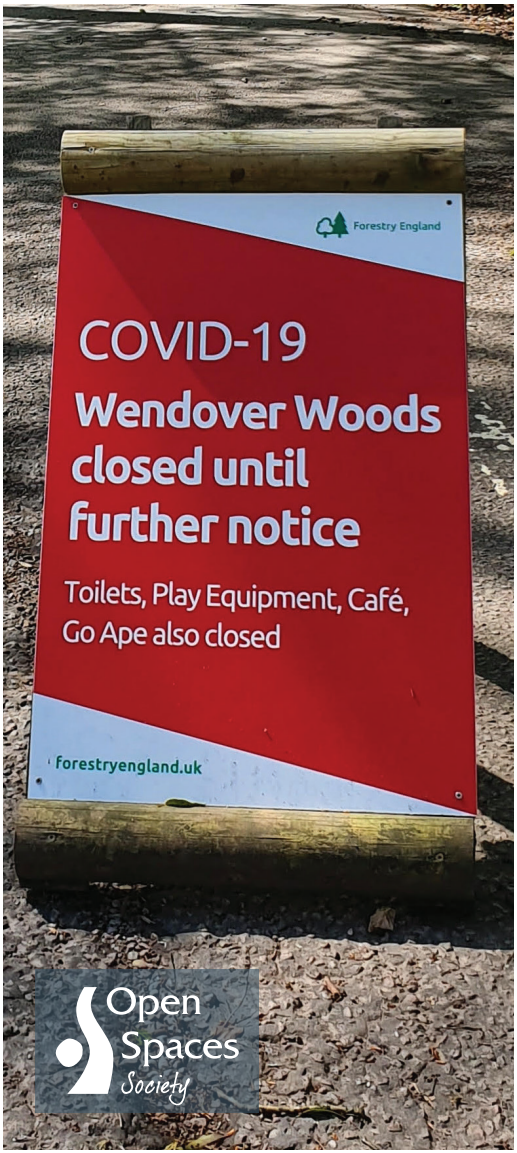
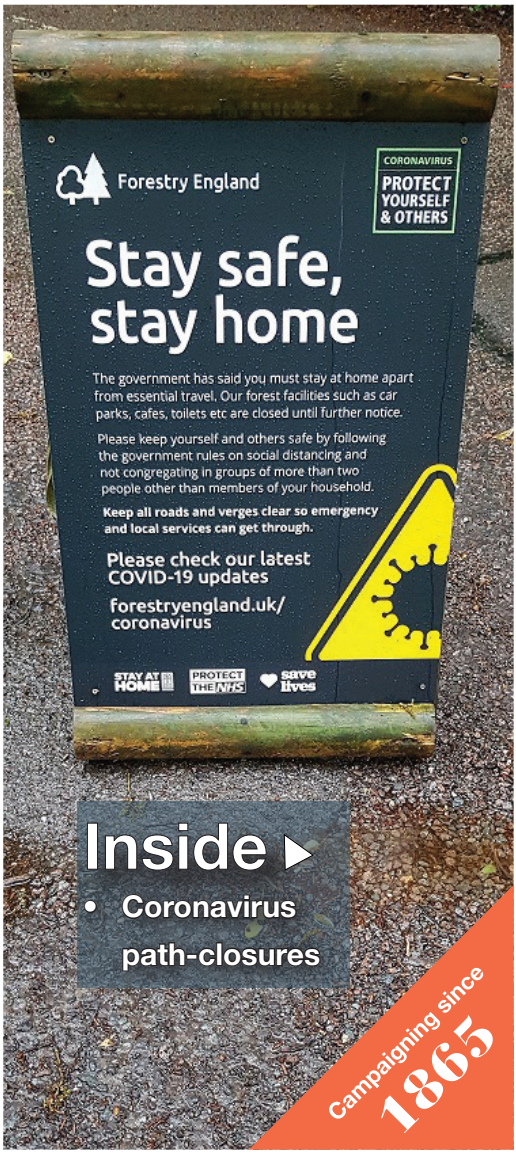
Open Space

Summer 2020 Vol 32 No 8





Open Spaces Society

Inside ▸

- Coronavirus path-closures

Campaigning since 1865

Open Space

Cover story

During the coronavirus crisis we have learnt of paths which have been closed unlawfully. The misleading sign (left) on Aston Clinton footpath 45, at the entrance to the Forestry Commission's Wendover Woods in Buckinghamshire, wrongly deterred people from entering. After intervention by the society, assisted by Natural England, the Forestry Commission apologised and replaced it with more accurate sign (right).

Opinion "..."

Vocal for local

As lockdown began, I foolishly thought we would have time to catch up with all those long-deferred jobs. I was wrong: we have been busier than ever.

Developers are not deterred by a pandemic: open spaces remain at risk, perhaps more so under cover of lockdown.

Some landowners have unilaterally and illegally closed paths, claiming risk of covid-19. However, in Wales, shoddily worded regulations have given some legitimacy to these unlawful practices with apparent encouragement from local authorities (page 3).

Evidence

We have pursued transgressions, pointing out that there is no evidence that residents of properties next to paths are at any particular risk from the virus, and no more than people living next to a road.

We appreciate that some occupiers are genuinely frightened because a path passes close to a property, and we urge path users to be considerate.

Lockdown has shown the immense importance of paths and open spaces to our health and well-being. People have discovered places for recreation on their doorsteps. Fortunately, the Westminster and Welsh governments are encouraging us to venture outdoors, recognising the benefits of doing so.

Let us hope that, when we have greater freedom again, there will be an army of campaigners to defend their local spaces and paths. But we shall also be faced with unprecedented austerity, and local authorities will have to prioritise brutally.

The pandemic has put a spotlight on the inequalities in society. It has also revealed the inequality of open space provision (see page 5). There is no statutory requirement to provide open space, no national standards for the amount of green space that should be provided, and no ring-fenced funding to secure its protection and management. Consequently, the poorer communities who need it most have less open space and what they have is of inferior quality.

Our clear message to governments is to give ring-fenced funding to public open spaces and to place a statutory duty on authorities to provide and manage them. In the scheme of things, relatively small sums can make a big difference.

Global

Thanks to lockdown, on a global scale, there has been a reduction in carbon emissions—less pollution, clearer skies, quieter roads and the return of nature. With 56 organisations we wrote to the prime minister, arguing that the health of humanity is inextricably bound to the health of our planet, and calling on government, among other things, to increase space for wildlife and people.

We shall continue to campaign for spaces and paths on people's doorsteps, where they are needed more than ever. **KJA**

Case File

Defining curtilage

Hampshire County Council v *Secretary of State for Environment, Food and Rural Affairs [2020]* EWHC 959 (Admin).

The high court has quashed an inspector's decision to remove from the commons register land at Blackbushe aerodrome on Yateley Common in Hampshire.

Hampshire County Council (HCC) brought a judicial review of the Secretary of State for Environment, Food and Rural Affairs for his decision to deregister the land. Blackbushe Airport Ltd (BAL) appeared in defence of the inspector's decision. Represented by counsel Philip Petchey, who acted for the society at the public inquiry, we intervened in support of the council.

A large part of Yateley Common was requisitioned as an RAF base during the Second World War. Although it was derequisitioned in 1960, it continued in use as a private airfield—despite being correctly registered as common under the Commons Registration Act 1965.

In June 2019 an inspector granted BAL's application under the Commons Act 2006 to deregister the aerodrome. The high court judge, Mr Justice Holgate, had to decide whether the inspector erred in law in concluding that the whole of the operational land of the airport (46.5 hectares) fell within 'the curtilage of a building' (the terminal). The judge found the inspector's decision was flawed, and 'goes way beyond any reasonable meaning that could be given to the phrase "the curtilage of a building".'

The terminal building on Yateley Common. Photo: © David Howard, Creative Commons Licence.

Strict approach

The council did not advance a definition of curtilage (which has not been defined by parliament). We argued for a strict approach associated with conveyancing practice. BAL responded with its own, wider, definition. The judge decided in favour of our definition without adopting all our reasoning; we thus played a crucial part.

We are delighted with the judgment. Blackbushe aerodrome is no more curtilage of the terminal building than a railway station is curtilage of the signal box. The ruling usefully supports our view that the Commons Act 2006 was never intended to deregister vast areas of common land.

We are grateful to HCC for leading the challenge and to our legal team and case officer, Hugh Craddock, for the depth and breadth of their research which helped to secure this outcome.

The judge has granted BAL permission to appeal 'because there is a compelling public interest in the court of appeal being able to review the case law on curtilage' although he considered 'the proposed grounds of appeal have no realistic prospect of success'. ❐

Coronavirus closures

Since lockdown we have learnt of some unlawful path closures and denial of access allegedly due to the pandemic.

Path campaigners may recall the widespread and damaging rights-of-way closures during the foot-and-mouth epizootic in 2001–02.

Fears that covid-19 would bring similar closures have proved generally to be mistaken. Indeed, the Westminster and Welsh governments' encouragement for continuing exercise during lockdown has greatly increased the use of some rights of way, and proved the value of public access in promoting health.

Predictably, however, some path closures have occurred—and in Wales, with official endorsement.

High risk

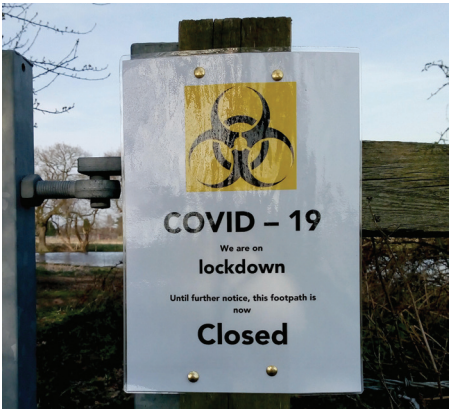
The Welsh government made the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (SI 2020/353), which places a duty (regulation 9) on local and national park authorities to close paths and access land which are likely to be crowded, or 'the use of which otherwise poses a high risk to the incidence or spread of infection in its area with the coronavirus'.

We asked the Welsh government what 'high risk' might arise from the use of public paths (noting that the risk from busy paths is separately addressed), but after waffling, it went silent.

Welsh government guidance does not address the point. But some local authorities have gone ahead and closed lightly-used paths under this provision, perhaps because they believe them to pass dwellings with vulnerable residents self-isolating (and it is difficult for us to verify the cause of closure, because we cannot know whether this is so and the authority will not say). Even so, these circumstances are unlikely to constitute a 'high risk' of infection.

We have joined weekly telephone conferences, of user groups, land managers and local authorities, led by Natural England to discuss and influence advice from the Department for Environment, Food and Rural Affairs on access to paths and open spaces. We have continued to press for evidence of any risk from the virus persisting on surfaces such as stiles and gates.

This risk highlights the merits of structure-free paths. Any stiles and gates, even those which meet the British Standard 5709 and were authorised by the highway authority under section 147 of the Highways Act 1980, ought to be removed if they are no longer necessary for the agricultural purposes which existed at the time of authorisation. ❐



Illegal sign on Spalford footpath 3, ten miles north of Newark, Nottinghamshire.

Four commons saved

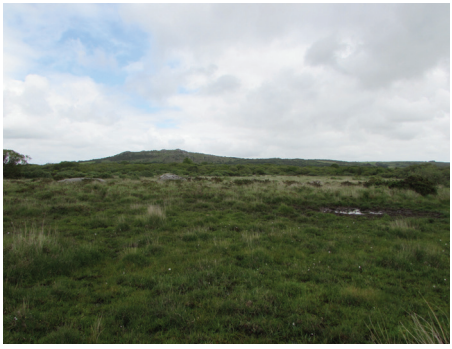
We are busy re-registering commons in counties known as 'pioneer areas' where the registers close on 31 December 2020.

Thanks to our painstaking researchers, we have re-registered commons in the pioneer areas of Cornwall and Hertfordshire.

Tomas Hill in Cornwall has restored six hectares of Trevellion Moor, near Luxulian, to the register. The land should have been finally registered under the Commons Registration Act 1965, but the commons commissioner, in refusing the original application, failed to consider whether the land qualified for registration as waste of the manor.

Tomas provided evidence that the land, which is grass and heath, still meets the criteria for waste land of the manor (open, uncultivated and unoccupied). The public-inquiry inspector, Mark Yates, agreed and the land has been registered.

Tomas has also secured five hectares of



Grey Rock on Trevellion Moor, with Helman Tor in the background.

Carrine and Goodern Commons near Truro. Provisional registration of the land, under the Commons Registration Act 1965, was cancelled in 1981. This made the land eligible for registration under the Commons Act 2006.

In Hertfordshire, Richard Sanders of the Landman consultancy has claimed 0.17 hectares of Berkhamsted Common (*pictured below*).

In 1934 the trustees of Berkhamsted Golf Club, the then landowner, made a

deed of declaration under section 193 of the Law of Property Act 1925. This gave the public the right to walk and ride here.

This land was overlooked when Berkhamsted Common was registered under the 1965 act. However, land covered by a deed of declaration now meets the criteria for commons registration, under the 2006 act (schedule 2, paragraph 2), so the land was added.

Frances Kerner has registered 1.66 hectares of common at Batchworth Heath, near Rickmansworth also in Hertfordshire. The re-registered land comprises waste land and 'scheme land'. The Commons Act 1899 scheme of regulation, approved in 1956, gave the public the right to walk and ride on the heath. All the scheme land should have been registered, but part was missed off, making it eligible for registration now. ❐

Taking action

Inequality of space

The present restrictions on public movement have highlighted the importance of accessible open space near to where people live and the need to ensure that provision is equitable.

The think tank, 'Centre for Cities', which focuses on improving the economies of the UK's largest cities and towns, published an article on 7 April, 'How easy is it for people to stay at home during the coronavirus pandemic?' It concluded that the provision of public open space varies by location and that not all built-up areas can currently provide enough space for inhabitants to exercise safely and maintain social distancing.

Our case officer, Nicola Hodgson, explains why there is such variation in provision and how people can protect and increase their open spaces.

Inquiry

There is no statutory requirement to provide open space. In England there is no national plan for open spaces (Wales has an overarching spatial plan). There are no national standards for the amount of green space that should be provided, although good practice is promoted by Natural England with its accessible natural green space standards, and by Fields in Trust. There is no ring-fenced funding: local authorities have less money than previously to spend on open space, and many have disposed of open spaces and playing fields.

The National Planning Policy Framework (NPPF) in England exhorts local authorities to seek open space in new developments, but maintenance and protection are a problem, and some developers require regular payments from new residents to maintain the open space.

The NPPF advocates the need to provide 'high quality open space' (para 91) and to 'plan positively for the provision and use of shared spaces' (para 92).

It is left to local authorities to make decisions about the amount and location of open space. Planning policies should be based on robust and up-to-date assessments of the need for open space, sport and recreation facilities and opportunities for new provision (para 96).

Allocation

Local authorities determine which land will be open space, alongside the allocations for development, through their local and neighbourhood plan processes.

However, open space does not have absolute protection because (para 97) it can still be built on in certain

Queen's Crescent Garden, designated as local green space in the Exeter St James neighbourhood plan. Photo: Aylwyn Bowen.

Greater appreciation

A recent survey by the Campaign to Protect Rural England and the National Federation of Women's Institutes showed that over half of the 2,000 people interviewed appreciated their local green spaces more since social-distancing measures had been introduced, and nearly two thirds considered that the protection and enhancement of open spaces should be given higher priority after lockdown .

Clearly, it is essential that councils keep parks open so that people can use them for their daily exercise as allowed under government guidance. The government has highlighted the importance of recreation and exercise, and parks are vital for this. We shall continue to lobby for increased resources for open space provision and management.

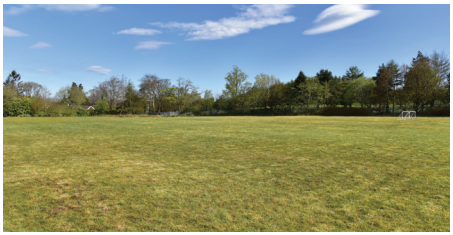
circumstances. For example, if an assessment has been undertaken which shows the open space is surplus to requirements, or the loss resulting from a proposed development would be replaced by equivalent or better provision in a suitable (but not necessarily the same) location, the protection can be challenged. If the development is for other sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use, there is room to relax the provision.

Local green space

We encourage people to identify land during the plan process so that it can be designated as local green space (LGS) under NPPF paras 99-101. This offers some protection but there are exceptional circumstances enabling such land to be developed. Some protection is also given by having land listed as an asset of community value (ACV) which is a material planning consideration.

We advised our members Victoria and Tony Harris to seek ACV status for a popular open space at Whitehall Road in Blackburn, and this was confirmed by Blackburn with Darwen Borough Council, to the delight of local people.

Whitehall Road field.



We also encourage the registration of land as town or village green (TVG) which gives protection from development under section 12 of the Inclosure Act 1857 and section 29 of the Commons Act 1876. Owners can voluntarily register open space as TVG to provide protection.

A green to chirp about

Our member East Malling and Larkfield Parish Council in Kent has registered four greens in the last five years, setting an excellent example to local councils.

Recently it has registered two and a half hectares, known as Whimbrel Village Green, an open space within a housing estate (the streets of which are named after birds), just to the north of the A20.

Whimbrel Village Green.

The other three greens, on land which it owns, are Rocks Close Green in East Malling, and Gighill Green and Willow Road Green in Larkfield. It registered

Rocks Close Green after it was approached by developers who wanted to buy part of it to build houses, leaving the other half as a small amenity area. The council refused to sell and determined to protect the land.

Thames-bed commons

The society has objected to the Port of London Authority's proposals for amendments to the Port of London Act 1968. The authority has submitted its proposals to the Marine Management Organisation (MMO) for confirmation.

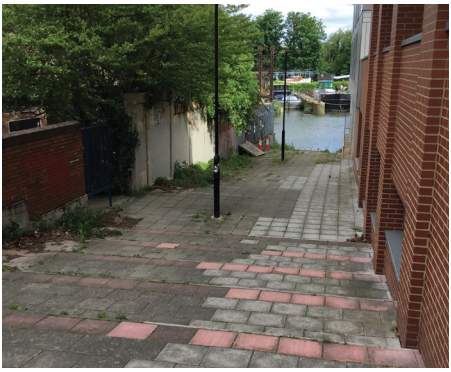
A draft amending order published by the authority proposes that 'no land forming the bed of the Thames may be the subject of an application' to register the land as a town or village green or common land under the Commons Act 2006. The authority says that the amendment is 'to address concerns' following the West Beach case at Newhaven (*OS* summer 2015 page 9) and follows precedent in other orders.

Otiose

But the precedent is found only in orders authorising major development, and the society has objected that there is no reason why the authority's land should attract special protection—although the decision of the supreme court in Lancashire (*OS* spring 2020 page 5) may now render the authority's amendment otiose. Nor has the authority identified what land might be eligible for registration. The society has suggested that the authority is simply taking advantage of the order vehicle to accumulate some 'just-in-case' protection.

We have questioned whether the powers conferred on the MMO under section 14(3) of the Harbours Act 1964 to amend other legislation (in this case, to disapply the 2006 act) are sufficient where the amendment is merely for the authority's convenience.

The authority also proposed to escape its existing obligations as



Smith Hill, Brentford, an ancient road to the Thames, which has already been partially blocked off by Hounslow Council. This could become commonplace under the Port of London's proposals. Photo: David De Vere.

regards landing places. At present, the authority, in abolishing any free landing-place along the tidal Thames, identified in 1967, must replace it with another equally convenient. The authority's plans would enable the authority to close the landing place without replacement.

The authority has not explained how such closure would be reconciled with any public right of way to the landing place, but undoubtedly the closure would prejudice the right of way: in effect, the authority might close the landing place, but a right of way would endure to a site which no longer has any public function.

Exercise of these powers would also interfere with free access to the foreshore, and for casual use of landing places by recreational craft. Fortunately, our and others' representations have made their mark, because the authority's submission to the MMO now contains a power to abolish only part of a landing place if it thinks what remains is adequate for public use. We are considering whether to maintain our objection. ▷

A toothless watchdog?

Our case officer Nicola Hodgson is keeping a close watch on the Environment Bill. This was introduced to parliament on 30 January 2020 with second reading on 26 February. The public-bill committee's scrutiny was cut short by the covid-19 crisis, and the committee is expected to report to parliament by the end of June.

The government's ambition, in its 25-year environment plan, is to leave the environment in a better state than it found it. The Tories' 2019 manifesto pledge, to 'protect and restore our natural environment after leaving the European Union' (EU), can only be achieved by a robust bill with enforceable targets. Sadly, the bill does not meet this test.

The policy statement accompanying the bill proclaims that it is 'part of a wider response to the clear and scientific case, and growing public demand, for a step-change in environmental protection and recovery'.

Post-Brexit principles

A large proportion of existing UK environmental law and policy derives from the EU, with its implementation largely monitored and enforced by EU institutions such as the European Commission. The bill therefore includes a post-Brexit set of environmental principles. It amends existing environmental legislation and introduces new measures in a range of environmental policy areas within the UK, but much of it applies to England only, which is a serious failing.

The bill has a vast remit. Among other things it provides for targets, plans and policies to improve the natural environment. It sets standards for environmental protection, covering nature and biodiversity; the creation of conservation covenants; and the regulation of chemicals for instance. Importantly, it establishes an environmental watchdog, the Office for Environmental Protection (OEP).

The government claims that the measures in the bill, including the framework to set legally-binding targets and the oversight provided by the OEP, will ensure that we shall not be worse off when we leave the EU. While the bill is welcome and crucial legislation, it needs significant amendment before it can guarantee that the UK will not fall below current standards, let alone improve on them.

Resources

In order for the bill to succeed it will require a significant increase in resources for local government and agencies such as Natural England and the Environment Agency, and effective support for the OEP so it can do its vital job. There is no indication that these are forthcoming.

The measures in the bill mandating net gain of biodiversity in new building projects could be undermined if developers rely only on generalised assumptions about the value of different habitats. There should be stronger safeguards to ensure that net gain is part of a plan to restore nature and that newly-created habitats are protected.

Public benefit

We have urged the government, in delivering its 25-year environment plan, to go further and require environmental as well as biodiversity net gain in order to secure the public benefits of health and well-being, for instance by creating new access opportunities such as village greens.

We shall continue to work with and support Wildlife and Countryside Link and Greener UK on amendments and briefings to MPs and peers during the bill's passage through parliament. We are not however optimistic that it will make the difference that is needed to fulfil the manifesto's vacuous pledge. ❐

Hanwell land-grab

Our member Steven Toft describes the fight by Hanwell residents to wrest their open space from land-grabbers

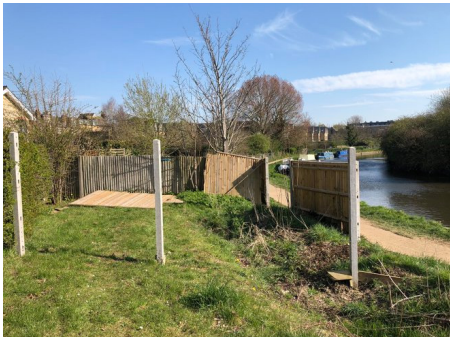
In April 2019, residents of Hanwell in Ealing, west London, were dismayed that part of their park had been fenced off. St Margaret's open space sits by the Grand Union Canal and is part of Brent River Park. The neighbouring landowner, the Hobbayne Trust, finding that part of the park is unregistered land, appropriated it.

In Ealing Council's local plan, this land, along with the rest of the park, is designated as public open space and a grade 1 site of importance for nature conservation. It has been publicly accessible for more than 20 years and has been maintained by Ealing Council at public expense since the early 2000s.

In response to residents' complaints, the Hobbayne Trust announced that the fenced-off land should have been part of the land it bought from British Waterways in 2014 and that an error by British Waterways had put the boundary in the wrong place.

But there is an Ordnance Survey map of 1960 which shows the boundary in exactly the same place as it was before the Hobbayne Trust moved its fence. That was two years before British Waterways was formed.

The fence after local people had broken through to the canal.



Local residents didn't buy the trust's explanation and nor did the Land Registry which rejected the trust's claim of ownership on 1 August 2019. Meanwhile, fed up with waiting for the trust or Ealing Council to move the fence, some residents took the law into their own hands. Over the August bank holiday they broke it down.

Yet the Hobbayne Trust persisted, arguing that it was in 'a legal process' to acquire the land. and failing to mention that its application to claim ownership had been rejected by the Land Registry.

Stewardship

Eventually, in December 2019, Ealing Council told residents that it did not believe the Hobbayne Trust had any legal claim to the land. The council confirmed that it would apply to formalise its stewardship of the land by registering its ownership and would ask the Hobbayne Trust to move its fence. So far that hasn't happened and the remains of the fence lie as a decaying eyesore, spoiling an otherwise beautiful, canalside walk.

The footpath to the canal has reappeared as people reassert their right of way over the land, and it currently forms a useful social-distancing refuge for people passing on walks along the towpath.

Residents continue to fight for the complete removal of the fence and the return of the land to the public. ❐

We need more time

We have written to the Secretary of State for Environment, Food and Rural Affairs, George Eustice, to ask him to extend deadlines for the registration of commons and town and village greens. He has yet to reply.

The guillotine for re-registering common land in seven English pioneer areas is the end of this year. Since lockdown it has not been possible to visit record offices to prepare and complete applications, so our work has been severely curtailed. We have requested the government to amend the Commons Registration (England) Regulations 2014 to insert a later deadline.

In the case of greens, once there is a challenge to people's rights to wander over land, there is only one year in which to submit an application to register the land as a green, thereby recording rights of recreation.

Such a challenge occurs when a landowner deposits a statement, under section 15A of the Commons Act 2006, that there are no public rights on the land. In the current public-health crisis it is not feasible to gather the necessary evidence and so we have asked that the 12 months be extended to 24 (the time allowed in Wales).

Uffington Green reprieved

Last summer we supported two of our members in objecting to the application from Ms Elizabeth Rosser of Pond House in Uffington, Oxfordshire, to deregister half a hectare of common land—known as the Green—next to her house.

Ms Rosser argued, among other things, that the land had never been common nor green, the landowner was unaware of the registration, and that its 'appearance in the register of common land is wrong and harmful to the interests of the owner'. None of these arguments suffices to justify deregistration under the Commons Act 2006.

With other objectors, we maintained that the land was correctly shown and that it was, and still is, waste of the manor.

In May we were told by Oxfordshire County Council, the registration

Uffington Green in the early 1900s (left) and now (right). Unfortunately, it is now trammelled with fence and hedge. Right photo: John Henville.

Left: schoolchildren on one of their organised visits to enjoy the open space. Right: the claimed land with the Forder viaduct beyond. Photos: Colin Brown.

authority, that Ms Rosser had withdrawn the application. We received the result with mixed feelings, and have told the council of our concern that it did not follow the correct process and consult the objectors; they might have wished the application to be determined once and for all. Nevertheless, we are of course delighted that the land is safe.

Forder fiasco

Our member Colin Brown had to wait for 12 years for Cornwall Council to determine his application to register a village green at Saltash. We share his dismay that, after all that time, his application was refused.

In *Open Space* summer 2019 (page 10) we described Colin's frustration at the delays and obfuscations by Cornwall Council over his application, which he submitted in February 2008, to register a small piece of land alongside Forder Creek near Saltash.

Eventually, after Colin complained to the local government ombudsman four times and some of his witnesses had died, Cornwall Council held the public inquiry in December 2019. In March the council endorsed the recommendation of the inspector, Douglas Edwards QC, to refuse the application.

The inspector concluded that Colin was correct to identify Saltash as the neighbourhood in which a significant number of the users of the land lived. At the inquiry he heard from 18 inhabitants of Saltash who gave evidence of the use of the land with their families.

However, the inspector did not consider that people had used the whole of the land for sports and pastimes, rather that the use was consistent with an application for a creek-side public path.

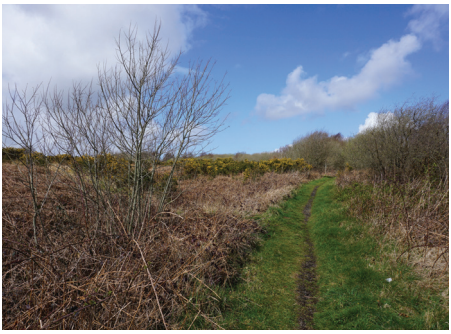
He also held that the use had not been 'as of right' since there was evidence of permission by the landowner to local people to use the land between 1994 and 2005. Therefore, the requirements for registration as a green were not met.

We commiserate with Colin and the Forder Community Association whose determination throughout has been impressive.

Land swap withdrawn

The Duke of Beaufort's Somerset Trust, owner of part of Clyne Common, south-west of Swansea, has withdrawn its application for a land swap.

The Somerset trustees applied to the Welsh environment minister, via the Planning Inspectorate, to deregister 2.7 hectares on the eastern side of the common so as to build affordable housing there. They were to replace this with farm land, two kilometres away on the western border of the common. The



Clyne Common: the proposed release land is to the left of the track. Photo © Bill Boaden, Creative Commons Licence.

trustees sought consent for the common exchange before planning permission was granted for the houses.

With many local people we objected to the swap. Clyne Common is one of the classic urban commons, with rights to walk and ride, which are an historical feature of Swansea city and county. The land to be taken abuts housing estates; the replacement land is far off and unattractive for public access.

Says our case officer Hugh Craddock: 'Swansea needs more affordable housing, but it is wrong to build it on the very site which makes Swansea special. This was a cynical attempt by the landowner to turn a profit from its ownership of Clyne Common. We are relieved that the application has been withdrawn.'

New battle of Hastings

Chris Smith, one of our local correspondents in East Sussex, has objected to proposals by Hastings Borough Council to replace the existing by-laws on Hastings country park and to ban public access from some of it. The council sent its proposed by-laws to the Department for Environment, Food and Rural Affairs for approval, and there was a month during which the public could make representations.

We objected because the new by-laws would make people criminals if they strayed from public rights of way. There are many paths here which are probably unrecorded highways; they were not claimed because use was not challenged. There are now likely to be disputes. The council argued that it was necessary to impose the by-laws to reduce anti-social behaviour but it presented no evidence of this being a problem.

Hastings has a high score on most measures of deprivation, and the country park is of great value to its residents. We deplore any attempt to reduce people's legitimate freedom here. ❐

Cliff-top path near Fairlight, Hastings country park. Photo: © Marathon, Creative Commons Licence.

New book on commons

The third edition of Gadsden's definitive work on commons has been published: *Gadsden and Cousins on Commons and Greens* (Sweet and Maxwell, £175), by Edward Cousins, Richard Honey and our own Hugh Craddock. It comprehensively covers the law of common land and town and village greens.

We shall review it in a future edition of *Open Space*. Meanwhile you can obtain a copy from the publisher's website *https://bit.ly/3bjE7ob*.

Path Issues

A path too near?

The society is locked in a legal battle to prevent the degradation of a charming path in Little Rollright, on the eastern slope of the Cotswolds' escarpment. Chris Hall, our Oxfordshire correspondent, sets the scene.

I first walked into Little Rollright (grid reference SP 294300) at some forgotten date in the 1980s on Rollright Footpath 7 beside the scruffy yard of Manor Farm and its listed seventeenth-century farmhouse. Mrs Prudence Macleod and her husband live there now: they are 'high-profile individuals in venture capital and media enterprises' and she is the daughter of Rupert Murdoch, the stonking-rich owner of the *Sun*, Fox News, etc; he has rooms in what is now styled the Manor Farmhouse, which he uses when in this country.

Paralegal

These personal and domestic details were provided by Mr Michael Wood who (in his well-worn paralegal role as path-shifter to the gentry) represented Mrs Macleod, in her application to divert the path, at the public inquiry which was held last October.

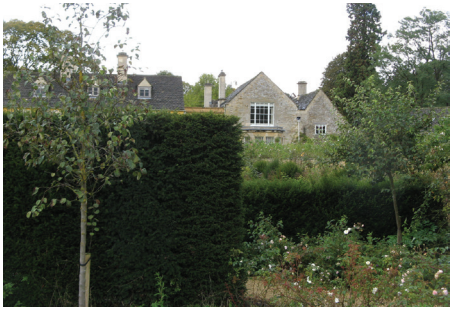
There is now a handsome neo-Georgian residence next to the old farm house with a formal garden covering the space (50 yards wide) between it and the path. But 50 yards is too close for the coy Murdoch clan. They have devised a diversion which relegates the proles (from whom Rupert makes his millions) to a path, running between a high embankment and banausic modern farm buildings—with no views of Manor Farm ancient or modern.

Falsely signed

This route is already waymarked and falsely signed as part of the D'Arcy Dalton Way, and the definitive route is obstructed by a greenhouse built over it and a bank which you climb or descend by a rickety ladder. The Murdochs, father and daughter, have not waited for the law before taking what they want. And just to demonstrate total control Mrs Macleod says that, if she does not get the diversion, she will build a wall, two metres high, beside the definitive route to obliterate views of the house and garden.

The inspector at the inquiry (Mrs K R Saward) correctly found that the

Public enjoyment: the C17 farmhouse (left) or today's farm buildings (right)?



diversion would be 'less enjoyable for most people than the existing path', public enjoyment being one of the considerations mandated by the Highways Act 1980, section 119 (6)(a). However she then decided that this was insignificant because it affected only a small section of footpath 7 and, in accordance with current case-law, she 'weighed' the loss of enjoyment against the owner's interest. Needless to say the privacy and security of these 'high-profile' individuals 'outweighed' public pleasure.

We unsuccessfully challenged in the high court the weighing of enjoyment against private interests, a process for which we argue there is no warrant in section 119. Now we plan to appeal. If we win, hundreds of paths threatened by private owners, who have bought their way into old farmhouses, mills, and converted barns, will be saved.

Welsh access reforms

The three groups of experts, established by the Welsh government to advise it on access and public rights of way (*OS* spring 2020 page 4) have met on three occasions. From the society, Hugh Craddock (access), Kate Ashbrook (paths) and Beverley Penney (mapping) are members of each group. The groups have identified the issues and discussed some options for reform but without yet getting involved in detailed amendments to legislation.

We are grateful to all who have sent us ideas about the reforms and we continue to welcome your suggestions.

Todd valley path saved

We are delighted to have helped to save 800 metres of footpath in the lovely Todd valley, between Kettleshulme and Rainow in Cheshire East.

The landowner applied to Cheshire East Council to have the path deleted, on the grounds that it was wrongly recorded on the definitive map in the 1950s.

Missing bridge over the River Todd.

Cheshire East Ramblers and Chris Meewezen, our local correspondent, objected, arguing that there was no evidence that the path was wrongly shown on the map. The council agreed and refused to make an order deleting the path. The applicant then appealed to the Planning Inspectorate which, on behalf of the environment secretary, refused the appeal.

Now that the route's status as a highway has been upheld, we shall press the council to remove the obstacles and replace the missing footbridge.

Straightening a dog-leg

Somerset County Council proposed a diversion of footpath 8/22 in Leigh-on-Mendip from its route through the house and garden at 17 Bellfield. The owner wished to sell, and had discovered that the path had not been diverted when Bellfield was developed. However, the council put forward a diversion of 8/22 which, while adopting a nearby alleyway, would introduce two dog-legs in the middle of an arable field to the north.

We objected, arguing that the farmer could not reinstate a path with a zig-zag alignment across the field, and that there should be a direct route from one side of the field to the other.

For reasons undisclosed, the farmer declined to accept a variation to achieve this. However, council officers, noting that the existing footpath already had one change of direction in the field (which may once have made sense, but the reasons for which are now lost), cleverly proposed an alternative line which linked to the old path at the change of direction, and which happened to come out at exactly the end of the alleyway. The result is a straight line across the entire field.

The order has now been advertised and, if there are no objections, will allow the sale of number 17 to go ahead.

Threat to ancient road

We have objected to a planning application for a campsite and buildings at Coldwaltham, West Sussex, in the South Downs National Park.

Our particular concern is the threat to the adjoining Colebrook Lane. We have criticised West Sussex County Council for its confused and incorrect response to the application. The council, which is the highway authority, has said that the lane, which is a public road, is a 'permissive path', and it makes many other errors. In particular, it fails to acknowledge the impact of the development on the road itself, that any person is entitled to use it, and that, although not maintained as such, it is very probably a vehicular highway.

Colebrook Lane—ancient road

We have urged the county council to correct its advice.

In addition, we have objected to the application because of the impact it would have on people's recreational enjoyment of the area and its natural beauty. The society considers it would be contrary to the purposes of the South Downs National Park if the national park authority were to grant the application

Hedged lanes

Hugh Craddock, our case officer, says: 'We are strongly opposed to this development in a quiet and beautiful part of the national park and its impact on the important, ancient Colebrook Lane. Most roads in the South Downs weald were like this once—unmade, hedged lanes incised into the landscape.

'We are deeply concerned that the highway authority, West Sussex County Council, which is charged to protect the public's rights to use and enjoy the highways, should have got in such a muddle. We trust it will put things right.' ❐

Legacies make the difference

We have published a new video to encourage visitors to our website to consider leaving the society a legacy. You can watch it on our website, *https://bit.ly/2LwAr7Y.*

It is thanks to the generosity of all those who have left us legacies in the past that we are able to continue our vital work through the covid crisis, and have strong reserves to give us confidence for our future. Legacies have also enabled us to take on new projects, such as commons re-registration.

We are deeply grateful to all who have been so generous to the society over the years.

Reviews

The Old Ways of Melbourne by Barry Thomas (£6 + £1.50 p&p from *https://bit.ly/3dOzPGX)*.

This little history of the development of public paths in a south Derbyshire village is by our energetic local correspondent for the area. It not only describes the current network of recorded paths but also gives a tantalising glimpse of unrecorded paths which need to be claimed before the definitive map is closed on 1 January 2026.

Walking the Shropshire Way by John Gillham (Cicerone, £13.46).

This was published for the relaunch of the main route of the Shropshire Way last autumn, after volunteers had renewed the waymarks which had deteriorated. Typical of Cicerone's guides, this is clearly set out with maps and photos. It is a two-week circular walk, taking in such beauty spots as the Wrekin, Stiperstones and Wenlock Edge, as well as the canals of north Shropshire. It is a fascinating and varied walk, and the guide is an excellent companion.

Walking the Lake District Fells: Wasdale and **Langdal**e by Mark Richards (Cicerone, each £13.46).

These books offer a wide range of walks to 25 Lakeland summits accessible from the two dales. They are embellished with Richards trademark 'linescape' drawings, fine photos and maps. They are packed with valuable information and will whet your appetite for the fells. **KA**

Slowing the pace of life

A friend of the society, Gareth Wyn Jones, introduces his recently produced book, *Energy, the Great Driver: seven revolutions and the challenges of climate change*, (University of Wales Press, £16.99, paper or e-book).

A book entitled *Energy, the Great Driver* may not appear that relevant to the enjoyment of open spaces, but its central messages are highly pertinent.

Over the billennia, organisms, including humans, have accessed new forms of energy, latterly of course fossil fuels, enabling more and more complex and resource-demanding biological and social systems to evolve.

These in turn require appropriate regulatory stabilizing mechanisms if they are to survive and prosper. The book concludes, firstly, that the behavioural regulatory mechanisms we have inherited from our hominid past and our own more recent socio-economic constructs, leave us singularly ill-prepared to face the challenges of global warming.

Secondly, it suggests, if we do indeed succeed in meeting the climate-change challenge and secure plentiful greenhouse gas-free energy, our problems will not be solved. More energy, even carbon-free, will increase the demands on other resources, including photosynthesis, and further accelerate the rate of change with profound psychological consequences. It will also lead to a human population of well over 10 billion.

Inevitably the pressures on the earth's open spaces and natural habitats would grow and our appreciation of them would be dimmed. Learning to live with less energy and consequently more slowly is surely the key to a sustainable future.

THANK YOU TO OUR LOYAL MEMBERS

All of us at the Open Spaces Society send our best wishes and deepest thanks for your continued support for our cause during these challenging times. We couldn't keep fighting to protect the commons, greens, open spaces and public paths that you love without your loyalty. We are continuing to work remotely to support our members with their campaigns alongside our efforts to protect the open spaces and paths which have become an increasing consolation to many during the past months. Please visit our website for the latest news and guidance, *https://www.oss.org.uk/*, and thank you again for all you do for us.

AGM 9 July 2020

In view of the current pandemic, the trustees have agreed alternative arrangements for the 2020 AGM, which would have been held in London on Thursday 9 July. Details of the arrangements are on our website at *https://www.oss.org.uk/need-to-know-more/information-hub/agm-2020/*. An explanatory letter with full details (and voting form for those for whom we have no email address) is enclosed with this edition of *Open Space*.

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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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