

Open Space

Autumn 2022

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 Open
Spaces
Society

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Campaigning since
1865

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Cover story

Natural regeneration of trees and other native plants at Dash Beck, the boundary between Uldale Fells and Dead Craggs Common in Cumbria. Stock was excluded by fencing in 2000. We discuss tree-planting on commons, and the consequences, on pages 4-6 of this issue. Photo: Jean Johnston, Natural England, Cumbria team.



Autumn crisis

‘... now it is time unequivocally to act’ wrote Louis MacNeice in *Autumn Journal* in 1938. And so it is in this autumn, when government has suddenly made a full-frontal onslaught on the environment, nature, and our enjoyment of them.

First there was the Retained EU Law (Revocation and Reform) Bill on 22 September to determine which of more than 2,400 pieces of European legislation will be scrapped—nearly one quarter of these belong to the environment department, and many are vital to the protection of our wildlife habitats, and to human health.

Investment

The next day the treasury published the Growth Plan, which proposes 38 investment zones where planning rules will be relaxed. The zones potentially affect seven national parks and 29 areas of outstanding natural beauty. The plan also trailed the Planning and Infrastructure Bill to accelerate major infrastructure projects, ‘minimising the burden of environmental assessments’.

On 24 September the *Guardian* reported that one victim of ‘growth’ would be the environmental land management schemes (ELMS), to be ‘reviewed’—though ministers had promised to pay farmers for providing nature and public access benefits (page 15).

We do not yet know the fate of the Levelling Up and Regeneration Bill, on which we are working as part of the

Better Planning Coalition of 29 national bodies to achieve improvements in planning, and to prevent excess centralisation and loss of democracy. It may be emasculated or lost in the current political confusion. What hope for green spaces then?

Nature and environmental organisations have reacted swiftly to this dire set of announcements, arguing, under the hashtag ‘AttackOnNature’, that the environment is crucial to growth. Unusually, new environment secretary Ranil Jayawardena produced a hasty, defensive video, but offered no practical reassurance. User bodies must shout about the importance of public access for our health and well-being, and for growth. Did the pandemic not show its massive importance?

Wales

It is much better in Wales. The Agriculture (Wales) Bill, published on 26 September, will provide support for ‘maintaining and enhancing public access to and engagement with the countryside’. In England we have achieved only ministerial promises which seem set to be broken.

Where is the hope? It lies in our united voices and in the voice of youth. The young wilders (page 12) who gathered at Knepp in West Sussex, just as the announcements came pouring out, were full of optimism despite the desperate times. Their five-metre-long manifesto says it all. Government must listen to them. They are the future. **KJA**

Case File



Highway trespass?

Director Public Prosecutions (DPP) v Instone [2022] EWHC 1840 (Admin).

In *DPP v Jones* (1999) the house of lords ruled that a demonstration on the verge of the highway was in that case a reasonable use of that highway, and that the demonstrators were not guilty of ‘trespassory assembly’ under the Public Order Act 1986.

Some 23 years later, in *DPP v Instone*, a strongly-constituted divisional court had to decide whether demonstrators in the entrance to the printing premises of Newsprinters Ltd, in Kitling Road, Prescot, Knowsley, were guilty of aggravated trespass under section 68 of the Criminal Justice and Public Order Act 1994. The offence cannot be committed on highway land (oddly, unless the land is a public path or byway—which then would raise the same considerations as in *Jones*).

Bell-mouth

The entrance to the driveway was the usual bell-mouth; the pavement was discontinued across the driveway, but followed the bell-mouth as far as the

gates, enabling pedestrians along Kitling Road to remain on the pavement further round the bell-mouth before deciding to cross. The protesters were set back from the notional line of the pavement across the bell-mouth (in red on photo below).

In the magistrates’ court, the district judge found that there was no case to answer, on the grounds that there was free passage over the land outside the gates, and the land had become highway by statutory dedication under section 31 of the Highway Act 1980.

Judgment

Holgate J gave the court’s judgment (the Lord Chief Justice and Saini J in agreement) that, for dedication to be inferred under section 31, there must be proof of actual public enjoyment, which there was not here.

It remains unclear whether Kitling Road, an adopted highway, extends beyond the pavement line: if it does the protesters may have been on the public highway. No evidence was brought before the court as to the extent of adoption.

The case now will return to the magistrates’ court for the trial to resume. □



The entrance to Newsprinters Ltd in Kitling Road. The red line, drawn on the road after the demonstration, is the notional pavement. Photo: Google street view.

Eversley Award-winner

The society has presented its prestigious Eversley Award to Chris Beney for his exceptional work.

Chris Beney is the second-ever recipient of the award for Outstanding Personal Endeavour (the first was Peter Newman in 2016).

The award is named after our founder, Lord Eversley and is presented to someone who has given a lifetime's



Chairman Phil Wadey (left) presents the award to Chris.

service, or undertaken long-term work, for commons, greens, paths, or public access.

Chris has devoted more than 30 years of his life to public paths and access. In addition to being a local correspondent for the society in Hertfordshire, he chaired the British Standards Panel for three revisions of the standard for gaps, gates, and stiles (BS5709).

He won agreement from users, local authorities, and land managers for the changes made, including the shift in attitude so that now the least-restrictive option is favoured on public paths, making it much easier for people of limited mobility to enjoy routes across England and Wales.

Chris, who is approaching his ninetieth

birthday, remains active near his home in Bushey, undertaking physical work on path improvements, ensuring proper recording on the official maps, and signposting of paths so that people have the confidence to use them. He has been a local pioneer in encouraging landowners to dedicate their land for access, and to provide additional benefits.

Difference

Says our chairman Phil Wadey: 'Chris has made a massive difference to people's ability to enjoy our public paths. The highlight of his work has been his unique ability to reach agreement among the diverse and conflicting interests of landowners, users, councillors, and officials. His way of dealing with people has made him able to negotiate difficult subjects well, and with resulting success.'

Chris responds: 'After early retirement from an engineering career I was pleased to get involved in the society, as a trustee, local correspondent, and representative for the path-structure work. This award is a timely boost and much appreciated.' □



Chris starting to install a kissing-gate to the new British Standard, with non-conforming stile behind it.

Tree-planting on commons

The Westminster government wants to treble tree-planting by 2024. What might this mean for commons in England?

The suburban resident of the Home Counties might assume that all commons historically were woodland, for the cessation of grazing in the twentieth century has caused many to become woodland through natural succession. However, a resident of upland England might assume that a fell common had always been denuded of trees, perhaps while lamenting an increase in gorse and bracken owing to a decline in the turn-out of cattle.

Some commons have been woodland for as long as records enlighten—Ashted Common in Surrey boasts over 2,000 ancient trees, many of them pollarded over centuries. It is a traditional woodland pasture, combining the commoning of animals with timber production, long before agroforestry became a ‘new’ idea.

Inaccessible

But most upland commons lack extensive tree cover, with commoners’ livestock discouraging trees from taking root, save in inaccessible places such as along rocky gorges or in boulder fields (eg Wistman’s Wood on Dartmoor). Views differ on how these places appeared in pre-history.



Wistman’s Wood on Dartmoor. Photo: © Ian Capper, Creative Commons Licence.

Commoning generally has been practised for centuries. Is what we see now very different from the mediaeval period? Has the modern shift from cattle to sheep affected the flora of upland commons? Our suburban resident might insist that the local common had always been woodland. Is it right to assert that upland commons always lacked scrub and tree cover?

Multiplicity

Today, there are incentives to increase woodland planting in the uplands. This is not a reprise of afforestation in the twentieth century, but a multiplicity of proposals to plant relatively small areas of deciduous woodland, or to cultivate scrub in often carefully-crafted sites along the sides of valleys or in combes.

New cover can improve biodiversity, ameliorate run-off (and its contribution to flooding), create shelter for livestock and—depending on the context—promote carbon capture.

The society sees merit in well-planned planting schemes as part of a strategy for the management of the uplands. But there is little sign of a strategy: every proposal is site specific, with no vision for what the nation wants to achieve in the uplands, still less a recognition of the special character of commons.

And new planting needs fencing in order to thrive. In the uplands, the fencing must be retained for many years. Such fencing requires the authorisation of the secretary of state or Welsh minister under section 38 of the Commons Act 2006, on which we are consulted.

Fencing would also be required if only to

enable natural regeneration. That would avoid the need to plant out with tubes (which have their own impact on the environment). But funding seldom fosters natural regeneration, presumably because it is too passive, and the pace of growth is far too relaxed for the average project term.

Expires

If that were all, the society might support a well-planned planting scheme. But there is little long-term experience of similar schemes or, if there is, it is not being taken into account. Section 38 applications for such schemes are sought typically for terms of 15 years, with no indication of a possible extension. When the authorised term of fencing expires, the responsible parties frequently revert to the minister to seek extensions of the term, justified on grounds that:

- growth is slower than expected and requires enduring protection;
- although consent was procured for tree-planting, other species have flourished because of the exclusion of livestock, and the parties want to protect them with continued fencing;
- management of commoning livestock would be impaired if the fencing were removed.

These grounds are predictable. Scrub and woodland can conflict with management of grazing by commoners unless the planting is fenced off from the rest of the common. It is more time-consuming to gather stock from the fell if animals might be lurking unseen in dense cover, and there are fewer active commoners to engage in the task. There must be considerable doubt about whether commoners will ever support the removal of such fencing, even when the planting achieves maturity.

Sustainable

We also doubt whether new woodland is sustainable in the selected upland locations. Even with protection from livestock, planted trees may struggle to become established, and after-care may be lacking, particularly beyond the term of any funding. Will trees really thrive in these habitats, or is survival dependent on an unspoken assumption of a permanent cessation of grazing?

As it happens, many woodland-planting proposals are put forward by the commoners themselves, typically through a commoners' association, in order to pursue funding via an agri-environment agreement. One senses that the proposals are often advanced without enthusiasm,



Planting at Branthwaite on Caldbeck Common in Cumbria (middle distance). Photo: Jean Johnston, Natural England, Cumbria team.



Birkett Common, Wharton Fell, Cumbria in 2020. Photo: © Stephen Craven, Creative Commons Licence.

and only because that funding is key to the medium-term viability of commoning.

There is a question over whether, when the decision finally must be made to dismantle the fences (leaving aside the possibility of perpetual extensions or permanent consent), funding and commitment will remain. And if that decision is not made, will it be practicable to identify, many years on, who originally was responsible for the erection of the now-unlawful fence—and against whom, if all else fails, a court order can be sought?

Consequences

Planting proposals can have other consequences. Fencing does restrict public access, even if stiles or gates are put in place. And planting close to paths and tracks is likely to interfere with passage, if not in the near future, then in the decades ahead, when funding and enthusiasm to cut back overgrowth have dissipated.

Unless there is a long-term plan to facilitate and maintain access, for example through leaving broad, open rides across suitable ground to coincide with where people want to go—on foot, horseback, or cycle or with a buggy—the likelihood is that access will be curtailed. There is no point in maintaining an inviting gate in the fence if impenetrable woodland lies beyond.

The society does not have all the answers to these questions, but at the moment, planting is overwhelmingly driven by conservation-orientated considerations: public access and the cultural heritage of commoning receive less consideration.

Subsidiary

Natural England, the driving force for most proposals, is quick to pursue its statutory purpose of promoting nature conservation, but its purposes to conserve the landscape, promote access to the countryside and encourage open air recreation, and contribute towards social and economic well-being appear subsidiary.

The society will continue to review applications for fencing of woodland planting on a case-by-case basis but, when presented with an assessment of the benefits of diversity, we shall look for evidence of long-term plans which integrate the public interest in access, the landscape, sustainable communities, and the vitality of upland commoning.

Honest

Proposals which fit into an area-wide strategy, are honest about the longer-term, and seek to deliver on every aspect of the public interest, are more likely to receive our support. □

Taking action



Cornish path cleared

Our local correspondent in north Cornwall, Lucy Wilson, served notice on a landowner for the illegal obstruction of a public footpath. Immediately, the path was cleared.

St Ervan footpath 16, three miles south-west of Padstow, had been blocked for a number of years. In October 2021 the Ramblers persuaded Cornwall Council to take action in removing the obstructions (pig net, barbed-wire and electric fencing, timber railing, crops, rabbit mesh and overgrown and infilled stone stile).

Public purse

However, it took a request under the Freedom of Information Act to reveal that the cost to the public purse of removing obstructions, for which the landowner was responsible, was an astonishing £24,946.

Lucy visited the site in June 2022 and found the path across two fields to be obstructed by crops: brassica and cereal.



Under section 137A of the Highways Act 1980 the occupier of the land has a duty to ensure the line of a footpath is clear to a width of at least one metre. This had not been done at St Ervan.

Lucy's long experience with Cornwall Council had taught her that she could not rely on the council to get the path cleared. Therefore, as well as reporting the obstruction to the council, she wrote formally on 28 June to the landowner, setting out the law and giving him seven days in which to clear the crops before she took the case to the magistrates' court.

Her recorded-delivery letter was signed for on 29 June, and on the evening of 30 June she received photographs showing that the crops had been removed from the line of the path. The owner denies that it was our letter which caused him to clear the path, but the clearance only occurred after the letter was signed for.

The society will get tough in defence of blocked paths. It pays to do so.



Left: the wheat crop obstructing footpath 16. Right: after clearance.

The value of nothing

The society scrutinises all the applications to the environment secretary and Welsh minister for works on and exchanges of common land. We recently received an egregious decision concerning the West Tilbury Commons in Thurrock, formerly Essex.

Thurrock Power Ltd sought approval from the secretary of state for an exchange of land at the West Tilbury commons. This was to facilitate a 'flexible generation plant' (gas and electrical storage) to be built at Tilbury sub-station, encroaching on the commons.

The project is being authorised under a development consent order, but for reasons unknown, the commons development was separately pursued under the Commons Act 2006 section 16.

Managed

The commons are said to be managed under the order confirmed by the Commons (West Tilbury) Provisional Order Confirmation Act 1893, and the subsequent award. But the Cole family claims now to be the owner of all the grazing stints allocated under the award (we pointed out that the register had not been amended to show this). There is supposed to be a board of conservators to manage the commons, with a Thurrock councillor as one of its members, but there is little indication that the board functions, and our requests for elucidation were met with silence. Yet the board will be responsible for managing the replacement land.

The applicants (the Cole family, which currently owns both the release and replacement land) applied to release ten hectares of Walton Common, with replacement arable land located further west, close to Fort Road in Tilbury. We said that the Tilbury commons should not be seen as an abstract designation which can be detached and applied to alternative

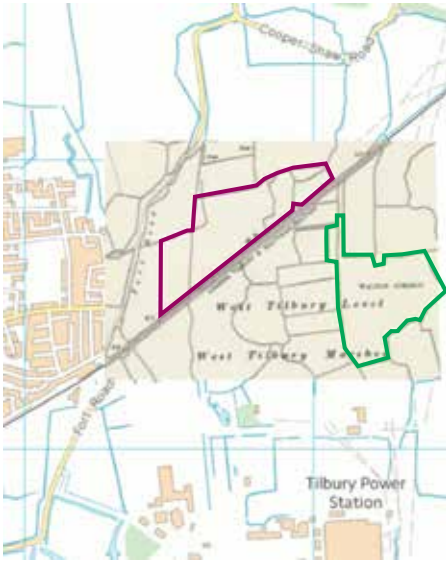
land simply to enable a development on the basis that it is a convenient site. These commons are oases of uncultivated grassland in an area of intensive agriculture, industry, and housing, and impossible satisfactorily to replace. As arable land, the replacement land would offer no biodiversity merit. The applicants are under no commitment arising from the section 16 application to return the arable land to grazing.

Inaccessible

The release land was virtually inaccessible to the public. But the replacement land stops short of Fort Road by 100 metres. A drain runs along the eastern side of Fort Road, preventing all physical access. Yet on the other side of Fort Road is the town of Tilbury. Indeed, the design of the scheme was insultingly intended to exclude the possibility of public access. There is a right of access to all the West Tilbury commons, for games and reasonable recreation, under the 1893 order.

We proposed a footbridge over the drain, which the applicants offered to provide on a permissive, trial basis—but they are under no obligation to do so and, even if they do, it can be removed at any time. Then, the only means of access from Tilbury will be an 1,800-metre walk along roads with frightening 60-mph traffic and no pavement.

Historic England submitted a detailed objection to the proposal—which the applicants absurdly suggested was the province of Thurrock council, not the national adviser on the historic landscape—and wanted trial trenching to establish the value of any buried archaeological interests. Ludicrously, the applicants suggested that the commons were not ancient in origin, because they were shown merely as 'marsh' on old county series maps—yet the 1893 order describes them as 'waste land of the manor of West Tilbury'. Historic



The release land is shown in green and the replacement land in purple. The plan does not show other common land in the vicinity. Contains OS data © Crown copyright and database right 2022.

England described them as recorded in a survey of 1584, and comprising ‘an historic estuarine marsh common which survives as a complete landscape entity within the former West Tilbury Marshes’.

Objections

Despite objections from the society, Natural England, and Historic England, and critical disputes over the facts and the alleged benefits, the Planning Inspectorate (PINS) refused to convene a public inquiry to test the evidence.

Inspector Alan Beckett issued his decision on 9 June 2022. He found that the exchange ‘would not prevent local people from using the commons as they do now’—ie not at all. He found no adverse impact on nature conservation, notwithstanding that future management of the replacement land would be overseen by an uninterested Thurrock

Council. He saw no adverse impact upon the character of the landscape.

He suggested that the trial trenching proposed by Historic England would itself require a section 16 application because it would be ‘intrusive’ (as if that would be worse than complete redevelopment), and found no evidence ‘that the exchange will have any adverse effect upon archaeological remains or features of historic interest’. But, he said, the exchange would expand the area of common land (by one hectare) and increase access to land (which no one may be able to reach). The application was approved and order granted.

This is one of the most philistine decisions of the Defra casework team of inspectors, and illustrates the determination of PINS to facilitate development wherever possible, even in the face of objections from the government’s statutory advisers on nature and the historic environment. We considered a challenge, but concluded that it would fail to show that it was wholly unreasonable, which is an almost insurmountable barrier. RIP Walton Common.

Hamsterley green

More cheerfully, a deregistration application for Hamsterley village green in County Durham, has been rejected. Hamsterley Parish Council wanted to deregister part of the green, which it owns. This was to enable a road to be built, across a ribbon of verge, to a new housing site. We objected.

Inspector Mr W Johnson refused consent because the council had failed to offer replacement land, contrary to the environment secretary’s policy on town and village greens which requires such land to be provided unless there are exceptional circumstances (which there were not), and because of the visual impact of loss of the green. □



Bracelet Bay win

We are pleased that Swansea City and County Council has withdrawn its application to deregister common land at Tutts Head, Bracelet Bay, Mumbles. This is a popular beauty-spot, and deregistration would have made the land vulnerable to development.

The council had applied to itself to deregister the land on the basis that the land was mistakenly registered as common. However, prompted by objections from the society and others, the council did further research and recognised that it had made an error. The land was subject to a scheme of regulation and management under part I of the Commons Act 1899, and thus it was correctly registered as common land.



Bracelet Bay common land. Photo: © Mick Lobb, Creative Commons Licence.

Our AGM

We held our AGM on 7 July, at Friends House, Euston Road, London. Thirty members attended, in person and online.

The chairman, Phil Wadey, reported that 53 votes had been cast. All motions were carried. The general secretary spoke about the year's work. In June the trustees had elected Stuart Bain as treasurer because his predecessor, Steve

Warr, was stepping down as a trustee at the AGM. Steve presented the 2021 accounts to the meeting as he had been treasurer for that period.

Phil thanked Steve most warmly for his eight years' service as trustee and treasurer, for putting our accounts into good shape and explaining our finances clearly. Steve was given a craftsman-made paperweight marking our appreciation.

Phil presented the Eversley Award to Chris Beney (see page 3).

Generous legacy

We were overwhelmed to receive a legacy of £782,437 from the late Ronald Smith, our vice-president and treasurer (os summer 2021 page 15). Legacies are so important to us and we are deeply grateful to Ronald.

After lunch, staff members explained their work. Later, John Lavery spoke of the threat of the holocaust memorial being sited on Victoria Tower Gardens, Westminster. Colin Saunders told us about the 66-mile Vanguard Way (between East Croydon and Newhaven, East Sussex), and the newly-formed Vanguard Way Association. Phil Wadey enlightened us on the dedication of a bridleway and access land at Sarratt in Hertfordshire.

New treasurer

Stuart Bain our new treasurer, has a background in banking, specialising in risk, compliance, and governance.

Living in south Wales, he is our local correspondent for Bridgend and the Vale of Glamorgan. A keen walker and conservationist, he is treasurer for the

South and West Wales Wildlife Trust, and he volunteers for the Long-Distance Walkers' Association, South East Wales Biodiversity Records Centre, and the Walkers Are Welcome Towns Network.

His skills, knowledge, and enthusiasm will be a great asset to us.

Waterhead common saved

Windermere Aquatic Limited (WAL) applied for the deregistration of land at Waterhead, just south of Ambleside in Cumbria. The land straddles Skelghyll Lane (the A591). The application was made under paragraph 6 of schedule 2 to the Commons Act 2006, and was required to show that the land was covered by buildings, or curtilage of buildings, since provisional registration on 16 March 1970.

The National Trust had unwisely agreed in 2017 to surrender the sole right of common which was registered as exercisable by it over the land. The surveyor responsible for the decision then left the trust, and the trust was unable subsequently to explain its action.

WAL has redevelopment plans approved. We acknowledged that the land west of the road (0.15 hectares) satisfied the paragraph 6 requirements having been



The land to the west of the A591, deregistered. Photo: Google street view.

largely built upon for many years. But the land east of the road (0.16 hectares) had never been developed, and the applicant initially offered no evidence that it was building curtilage. It is used for storing

dinghies and occasional car-parking.

With others we objected. Cumbria County Council's development control and regulation committee agreed with the officers that the application should be granted for the west land, and refused for the east. The east land therefore remains registered common land, albeit no longer subject to any right of common thanks to the short-sighted decision of a National Trust surveyor.

Compound at Chobham

We have welcomed inspector David Wyborn's refusal of consent, under section 38 of the Commons Act 2006, for a new works-compound on Sunningdale golf course, part of Chobham Common in Surrey. The development was proposed



Chobham Common: the proposed works would have been to the right of the track.

by the golf club, to replace another nearby which was partly on the common. We objected to the application, arguing that there was no need for the compound to encroach on the common.

The inspector found that the new compound would 'cause harm to the conservation of the landscape', and did not need 'to be located within the common land to the extent proposed'.

Electronic registers in Wales

We have received an update on the project to develop and introduce electronic registers for common land and town and village greens in Wales. There have been delays due to the need to translate into Welsh the information on

the registers. This should be done by the end of this year.

There will be a public consultation on the draft electronic registers, presumably in 2023. The Welsh government cannot yet give a date for the system to go live.

Young wilders

On 24 September our general secretary joined 100 Youngwilders at their summit at Knepp Wildland in West Sussex. The aim was to discuss the benefits of rewilding and public access, and to produce a manifesto of demands for the next generation. After a walk and talks the group got writing, and produced a manifesto which was five metres long.

It will need some editing but it is an important statement for the future, to which government and other decision-makers should pay attention.



Half of the five-metre-long manifesto.

Norfolk mini-common saved

East Rudham Parish Council in Norfolk has withdrawn consent for works on its common, ensuring that the land remains free and unencumbered.

The common (owned by the council) is a one-eighth of a hectare patch of land in East Rudham, six miles east of Fakenham. Eastern Power Networks plc applied under section 38 of the Commons Act 2006 for consent to install a three-metre square electricity substation here.

The common is the site of the old village pond, situated within former allotment



The common at East Rudham.

gardens, and is a pleasing amenity for the village—in effect a tiny village green.

We objected because the development would be ugly, and would dominate the common, and threaten a mountain ash tree growing there. The substation should be sited off the common. Local people also objected and pressed the parish council to decline to allow this development on its land.

The council relented and has told Eastern Power Networks that it refuses permission. Thus, the application has been withdrawn.

Growth is all

We were already concerned that the Levelling Up and Regeneration Bill, now in parliament, would reduce democratic involvement in the planning system and give too much power to ministers. Now the government's Growth Plan makes matters much worse.

The new policies conflict with the ambitions and targets of the Environment Act, and the 25-year environment plan, for the protection of the environment and mitigation of climate change. Green spaces will be more vulnerable to development than now.

The plan aims to accelerate infrastructure projects, creating 38 new investment zones with deregulated planning, and to reduce consultation with statutory bodies.

The Retained EU Law (Revocation and Reform) Bill will remove retained EU

laws, including the habitat regulations, which protect the environment and nature. The government will also consider changes to judicial review to avoid claims which, it says, cause unnecessary delays.

We are working with the 28 other members of the Better Planning Coalition to save our planning system and environmental laws.

Land-use inquiry

The society was invited to give oral evidence in July to the House of Lords committee investigating 'Land use in England'. Our general secretary appeared with Tom Platt from the Ramblers.

We argued, among much else, that public access, currently sidelined, should be central to the land-use strategy, and that there should be access for all to green space.

Rescued commons

We celebrate decisions to grant our applications to add commons to the registers in Cornwall and Hertfordshire.

The Cornish sites are two small pieces of land (totalling 0.146 hectare) two miles south of Mullion in Cornwall.

The land was provisionally registered as common under the Commons Registration Act 1965, but late in the day the applicant withdrew the application and the commons commissioner refused to register the land. Under paragraph 4 of



One of the rescued commons, looking north-east. It lies to the right of the road.

schedule 2 to the Commons Act 2006, the land became eligible for re-registration. The society's application to the commons registration authority in Cornwall showed that the land was open, uncultivated, and unoccupied, ie that it remained waste land of a manor.

The land was formerly in the manor of Predannack Wartha and is just north-east of Teneriffe Farm. It is a remnant of manorial waste that survived following the inclosure of Predannack Wartha Common.

Herts additions

The Hertfordshire commons rescued are Walmans Green and Clay End Common (each about half a hectare), two miles south-east of Walkern near Stevenage. Similarly to the Cornish commons (above), they



Part of Clay End Common.

were provisionally registered as common land. In the face of objections, the applicant withdrew the application relating to Walmans Green, and the commons registration authority cancelled the proposal for Clay End Common. Once again, the society had to prove that the land was waste land of the manor—which we did.

All these are small sites, but are welcome additions to the registers of common land; they contribute to a varied landscape, and give the public the right to walk there in due course.

We are indebted to the legacy of Jack Candy which funds this vital work. □

Path Issues

British Horse Society grant

We are pleased that the British Horse Society has agreed a new scheme with Sport England to give a grant towards expenses incurred for any applications for definitive map modification orders. These must be either to add bridleways or byways to the definitive map, or to upgrade routes shown on the map as footpath to bridleway or byway, or bridleway to byway. The grant is up to £75 for such applications and the scheme is available to all.

Further details can be found at <https://bit.ly/3xVwGSj>, under 'making a claim for DMMO applications'.

Local correspondents gather

About one third of our local correspondents met for a catch-up and training session in July. Our venue was once again Hillscourt on the edge of the Lickey Hills near Bromsgrove in Worcestershire, providing a pleasant ambience with walks from the doorstep.

The items we discussed included the Deregulation Act 2015 and consequences of the revocation of the 2026 deadline for historic-path claims; our legal support for

local correspondents; the use of section 130A of the Highways Act 1980 to force highway authorities to act; multi-use paths; our guidelines for responding to renewable-energy development; securing better outcomes for access through the planning process; presenting evidence for definitive-map modifications at public inquiries; the Equalities Act 2010, and the lawfulness of structures.

We shall hold a similar event before long.

Path blockers to prison?

A little-noticed provision of the Police, Crime, Sentencing and Courts Act 2022 (section 80(2)) amends section 137 of the Highways Act 1980 so that anyone who wilfully obstructs free passage along a highway is liable to imprisonment for up to 51 weeks, or a fine, or both. Path blockers look out!

Cornwall Council's comedy

Lucy Wilson's threat of prosecution for obstruction of St Ervan footpath 16 (page 7) also highlighted Cornwall Council's farcical process for authorising structures on public paths. The council's guidance, 'Gaps, gates and stiles on a public right of way', states that 'You must apply to Cornwall



Local correspondents and staff take a breather in the Lickey Hills.

Council for permission to erect or alter any type of structure on or across a public right of way’.

The council wrote to the owner of land crossed by St Ervan footpath 16 in response to a complaint, pointing out that it had not received an application for these structures. It then said: ‘Please accept this letter as lawful authorisation of the structures listed below.’ Yet no application had been made.

Worse still, many of those structures were not in accordance with British Standard 5709 and should never have been allowed.



Gates on St Ervan footpath 16, which were authorised by Cornwall Council, despite not being to British Standard or in line with the council’s policy. Lucy has served a notice on the council, under section 130A of the Highways Act 1980, calling for their removal.

What future for ELMS?

We are deeply concerned by reports in September that the government planned to ditch its environmental land management scheme (ELMS) whereby farmers and land managers are paid for environmental and public-access provision.

The Department for Environment, Food and Rural Affairs (Defra) countered that

this was not so but that, in view of the government’s Growth Plan it was to review ELMS. We fear this could lead to a severe watering-down of the proposals.

For the last six years, with other organisations, we have pushed relentlessly for ELMS to pay for more and better access. Ministers promised this during the passage of the Agriculture Bill and subsequently. We have yet to see access included in ELMS, and we have developed detailed proposals of how this could be achieved.

We believe that ELMS should fund access where people want and need it, whether by leaving wide, unploughed paths across fields and mowing headlands, or by creating routes which avoid busy roads.

Meanwhile, the Agriculture (Wales) Bill is much more positive, with support for ‘maintaining and enhancing public access to and engagement with the countryside and the historic environment’ (clause 8(2)(h)). What a contrast with England!

Chas for Stroud

We have appointed Chas Townley as our local correspondent for Stroud District in Gloucestershire.

Chas lives in Stroud and is a retired social-housing manager and former Stroud District and Town councillor. He has been working on the registration of unrecorded rights of ways in Stroud and surrounding parishes. As a result, 27 applications have been made to add paths to the definitive map, and three public path agreements have been made with landowners.

Chas is a keen walker and local historian.

AGM 2023

Our AGM next year will be on Thursday 6 July at Friends House, Euston Road, London. We are likely to offer an online option again, and hope for a good turnout.



The Blue Commons by Guy Standing (Pelican £22 hardback 584 pages).

Descending by Grindsbrook to Edale the Manchester rambler, in Ewan MacColl's eponymous ballad (inspired by the 1932 trespass), encounters a hostile gamekeeper who tells him—'All this land is my master's', but

At that I stood shaking my head;
No man has the right to own
mountains
Any more than the deep ocean bed.

In the 1930s a contrast could still be drawn between mountains and oceans because the colonialist-cum-capitalist takeover of the seas lay mostly in the future. It is the great virtue of Guy Standing's book to analyse how this came about, and then to demonstrate its ruinous effects on the seas and those who derive modest livings from them.

Concept

For centuries the seas had been *res communes omnium* (things common to all)* in the Roman jurists' phrase, a concept first challenged by imperialist Spain and Portugal, which with papal backing divided the new lands of America and the Far East and their seas between themselves. And the oceans became increasingly enclosed (*mare claustrum*) in the C19, as nationalism and industrialised markets took hold. Steam trawlers displaced small boats and competition grew between nations. Standing reminds us of the almost comic cod wars (1958-76) in which Iceland roundly defeated the UK and the Royal Navy by threatening to leave NATO.

This conflict serves to illustrate that the seas were becoming as much matters of

international dispute as land, a process which has gone much further since. Industrial fishing factories now plunder on a huge scale—Chinese behemoths robbing west African families are but one egregious example.

Legacy

Standing is Professor of Development Studies at the School of African and Oriental Studies, London University, and has held chairs in several others. He spent more than 30 years at the International Labour Organisation, that still-functioning legacy of the League of Nations; he is an internationalist to the core, and devotes a significant chunk of this book to reviewing the unsuccessful attempts which have been made to find international solutions to oceanic problems.

He advocates instead a Blue Commons Fund whose income would be spent (1) on reversing the losses caused by the rentier capitalism under which the oceans now struggle, (2) on sustainable development, and (3) on reducing inequality and increasing basic economic security. To finance this, Standing proposes taxes on carbons, cruise-liners, 'fish aggregating devices' which 'accelerate the taking of common pool resources', and fishing factories.

Excellent, but don't hold your breath. Most of the seas have never been commons in the sense that their management has been in the hands of their users. Had they been so, all might have been different.

Chris Hall

*On page 12 Standing misconstrues *communis* as 'belonging to', though his argument is that the seas should not *belong* to anyone.

Jack Burling, path defender, 1935-2022

Our former trustee (2002-4) and path campaigner, Jack Burling, has died aged 86.

Jack was born in Parkgate, Rotherham, an only child who roamed freely over the neighbouring estate, Wentworth Woodhouse, dodging gamekeepers—he never worried about trespassing.

As a teenager he became an apprentice lathe-turner before being called up for national service. A conscientious objector, he was imprisoned, but an appeal, supported by a Quaker-funded solicitor, gave him the option of health-service work, which he never regretted. Here he met his future wife Eva, a nurse, and spent his working life in the NHS.

Path inspector

With Eva he joined the Ramblers' Association's public rambles in Sheffield. He was appointed a path inspector for the Peak and Northern Footpaths Society (PNFS), but he soon became disillusioned by its Manchester focus and lack of concern for south Yorkshire. This caused him to form the Sheffield Ramblers' footpath committee, of which he was the first footpaths secretary, covering a territory from the upper Derwent in the west to Goole in the east.

He worked closely with the PNFS's activist Don Lee (a former local correspondent and trustee of the OSS); and they were an indomitable team. Although Jack worked night shifts (four a week for more than 30 years) at Lodge Moor Hospital, he joined Don in court, at public inquiries and at council meetings, and the duo were the bane of path-blocking landowners and lax councils.

They inspired the late John Riddall, barrister and co-author of *Rights of Way: a guide to law and practice*, to get involved in rights-of-way work when he saw them in action at a public inquiry in John's neighbouring village.

There are hundreds of paths which Jack helped to add to the definitive maps, throughout south Yorkshire and Derbyshire. When Sheffield drew up its first definitive map in the 1970s, Jack spent countless hours gathering witnesses and representing the Ramblers at public inquiries to get paths recorded.

Access

A founder member of the Sheffield Campaign for Access to Moorland he was active in the fight for the Countryside and Rights of Way Act 2000.

He moved to Cornwall in 2004 for ten years to be near his family, but frequently returned to Yorkshire to defend paths; he also fought many Cornish path-battles.

His friend John Harker reports that Jack, an atheist, joked that when he died and arrived at the pearly gates, he would ask St Peter if he had authorisation for those gates from the highway authority: if not they were an illegal obstruction—or if St Peter said this was not a public highway, he would seek evidence to record it as such. Once a highway campaigner, always a highway campaigner, that was Jack.

This note draws heavily on a tribute by John Harker in the PNFS magazine, Signpost, summer 2002.



Jack Burling. Photo: via CPRE PDSY.

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.

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