Open Space

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Open Spaces Society

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Campaigning since 1865

Open Space

Cover story

The extensive, 138-hectare Port Meadow in Oxford. This urban common has public rights to walk and ride under section 193 of the Law of Property Act 1925. This is thanks to the society's campaign a century ago, which secured the original provision in the Law of Property Act 1922, later consolidated in the 1925 act (see page 4). Photo: Graham Bathe.

Opinion "..."

What quantum shift?

Last July Natural England (NE) and the Department for Environment, Food and Rural Affairs (Defra) invited us to contribute to Lord Agnew's 'Commission on levelling-up access to the outdoors for all'. They wished to 'gather views and consider the development of policy-level, cross-government solutions that can deliver a "quantum shift" in access to the outdoors and nature'.

The challenge had been set by Steve Barclay, then Chief Secretary to the Treasury, to make proposals for the 2021 spending review. This was encouraging, since the treasury does not normally take any interest in public access.

Abundance

We were invited to one meeting at which user groups offered an abundance of ideas. But we heard no more, despite chasing, and Steve Barclay moved on. We learned that the spending review was to provide £30 million to improve access to green spaces, and £9 million to 'level up' urban green spaces across the UK. This is a pittance for securing equality of green space—and no quantum shift.

In April the government confirmed the Agnew Commission's findings were not to be released 'in a consolidated way'. Caroline Lucas (Green MP for Brighton Pavilion) expressed her profound disappointment at this and asked for an urgent debate on the right to roam.

Dismissing her, Mark Spencer, leader of the commons, replied: 'We are blessed in this country with hundreds of thousands of miles of public footpath … the countryside is a place of business and food production'. In other words, no movement—let alone a quantum shift.

And note, Mr Spencer (MP for Sherwood in Nottinghamshire) is in the farming business, and former chairman of the National Federation of Young Farmers' Clubs, so hardly likely to be pro access.

Subsuming

Moreover, we risk losing NE, Defra's adviser on access and landscape as well as nature. Included in a recent consultation on 'nature recovery' is a proposal to 'explore options for consolidating Defra group's dispersed environmental regulatory functions', which is code for subsuming NE into some larger body. We shall resist this.

But hope comes from other quarters. I joined the Kinder in Colour celebration the day after the Kinder ninetieth event in Hayfield (see page 3). Black people, people of colour, and many others, gathered for a walk over Kinder.

They spoke of invisible barriers in the countryside, and the healing qualities of the earth and nature. They want to create a new culture of the countryside, fully inclusive and embracing the differences which divide us.

Other user groups must diversify and join with them to broaden the movement for access and strengthen our call to action. As a combined force we just might achieve that quantum shift. **KJA**

Taking action

Threat to legitimate activities

When the Anti-social Behaviour, Crime and Policing Act 2014, with its power for local authorities to make public space protection orders (PSPOs), was going through parliament, we won some concessions for open spaces and public highways, but it remains an oppressive piece of legislation.

There is no requirement on local authorities to inform the society when they make PSPOs affecting public paths and open spaces. Fortunately, however, we became aware of a proposal from Canterbury City Council in Kent for a PSPO for the 'Whitstable and Herne Bay Coastal Zone' in time to respond.

The order would create new criminal offences to address activities having 'a detrimental effect on the quality of life of those in the locality' (a requirement of a PSPO). Included are provisions to prohibit using disposable barbecues, and recreational camping.

Whitstable sea-wall frontage: it would be an offence here to drink from a glass bottle of fruit juice. © Richard Law Creative Commons Licence.

We have objected, identifying multiple flaws which risk making criminals of Whitstable's residents, business owners, and visitors.

The draft would apply to much of Whitstable town centre, even though described as applying only to the sea front.

It would make it an offence, for instance, to ride in a bus into Whitstable town centre; drive along roads near the sea front; take a glass baby-bottle or bottle of fruit juice onto the beach; enter any area designated a wildlife-protection zone, without any rules about how such an area is designated; keep a baby-shade erected on the beach for more than 12 hours; or swat a fly in the coastal zone.

Riddled

The council wants to take steps to control anti-social behaviour in the coastal area, but it would be criminalising ordinary, legitimate activities. The draft is riddled with elementary errors and should be withdrawn.

The council must specify exactly to which land the order would apply, and think carefully about the scope of any new offences, with convincing evidence of the need to create them.

Unfortunately, PSPOs enable local authorities to create sweeping new criminal offences, without any requirement (as there is with by-laws) for them to be approved by ministers.

Members should watch out for PSPO consultations in their areas and alert the society if they believe paths or open spaces will be affected. ❐

Kinder: what next?

The ninetieth anniversary of the mass trespass on Kinder Scout was an opportunity to consider future campaigns.

On 23 April, the Royal Hotel in the Walkers Are Welcome town of Hayfield was packed for the Kinder celebrations. We were joined by many descendants of the brave trespassers of 24 April 1932: a moving experience.

The speakers were Caroline Lucas, Westminster's first Green MP (Brighton Pavilion); Yvonne Witter of Peak District Mosaic; Craig Best, the National Trust's general manager of the Peak District (including Kinder Scout); Stuart Maconie, broadcaster, author, and

The speakers, left to right: Craig Best, Yvonne Witter, Dave Toft, Kate Ashbrook, and Caroline Lucas. Photo: S Clarke.

Ramblers' president; Keith Warrender, author of *Forbidden Kinder* (see page 16); and our general secretary Kate Ashbrook. It was chaired by Dave Toft of the Hayfield Kinder Trespass Group.

Caroline, Kate, and others spoke of a new movement for public access, a Natural Health Service, and better access laws. We deplored the government's failure to act on access, and its limp response to the Glover review of protected landscapes (page 10). There must, we said, be equality of access, and all sectors of the population must feel welcome in the countryside.

This surely is what the trespassers would have wanted, and we owe it to them to fight for these ideals.

Question

Earlier that week, Caroline had asked a parliamentary question, using the Kinder ninetieth anniversary as a peg to call for an urgent debate on the right to roam. It had received a brush off from the leader of the house of commons, Mark Spencer, who is a farmer (see *Opinion*, page 1).

The Kinder celebrations reminded us of how far we have come in the last 90 years—but also how far we still have to go to win access for all. ❐

The banner behind the speakers at the event. It was commissioned last year by Mid Pennine Arts, Pendle Radicals, and the Working-Class Movement Library, as a protest against the Police, Crime Sentencing and Courts Bill (now, disastrously, an act). It was created by James Fox and Ed Hall. Photo: S Clarke.

Commons-law centenary

On 29 June we celebrate the centenary of the Law of Property Act 1922 which was important for commons.

Thanks to the society, the Law of Property Act 1922 (the 1922 act) gave the public rights to walk and ride on certain commons, and protected commons from enclosure and encroachment.

The society was concerned that the 1922 act was to abolish copyhold, the form of land tenure whereby tenants' rights, including rights of common, were recorded by the manorial courts. When attempts were made to enclose commons the society always referred to the manorial records to ascertain the existence of common rights. This would no longer be possible. It also feared that landowners would buy the common rights. Without rights, commons would be lost.

Amended

The Law of Property Bill was amended in committee through the efforts of Stanley Buckmaster (a Liberal peer and keen supporter of the society). He proposed a provision that the public should enjoy a permanent right of access to all commons for air and recreation which he and the society considered would protect commons. However, this met with opposition, and was dropped. The Lord Chancellor, the Earl of Birkenhead, suggested that the society consult with the Ministry of Agriculture and Fisheries. After many conferences, the government inserted two clauses which became sections 102 and 103 of the 1922 act.

Urban district

Section 102 gave the public the right to walk and ride on every common or piece of manorial waste in the Metropolitan Police District, or wholly or partly in any borough or urban district, and any rural common to which the provision was applied by the landowner. Section 103 required the minister's consent for any works on land which was subject to common rights on 1 January 1926.

The 1922 act did not come into force. Instead, by a subsequent consolidation act, sections 102 and 103 became sections 193 and 194 respectively of the Law of Property Act 1925. But their origins lie rooted in long debates on the 1922 act.

Further information is in *The Origins of sections 193 and 194 of the Law of Property Act 1925* by the late Bernard Selwyn (1997) which is on our website. ❐

Panorama from Pumlumon common in mid Wales. In 1932 the landowner, the Crown Estate, granted access under section 193 of the Law of Property Act 1925. Photo: the late Liz Fleming-Williams.

Case File

Common curtilage

Blackbushe Airport Ltd v *R (on the application of Hampshire County Council) and another.*

The supreme court has refused Blackbushe Airport leave to appeal against a decision that the aerodrome should remain registered as common land.

The aerodrome lies on Yateley Common in Hampshire. It was requisitioned by the RAF during the Second World War. Although derequisitioned in 1960, the common continued to be used as a private airfield, despite being correctly registered as a common under the Commons Registration Act 1965.

The airfield is now operated by Blackbushe Airport Limited (BAL).

Applied

In November 2016, BAL applied to Hampshire County Council to deregister the aerodrome on the grounds that it was 'curtilage' of the terminal building.

The application was made under paragraph 6 of schedule 2 to the Commons Act 2006. This enables an application to deregister common land where, among other requirements, 'since the date of the provisional registration [16 May 1967] the land has at all times been, and still is, covered by a building or within the curtilage of a building'. The effect of the application, if granted, would have been to deregister 46.5 hectares of registered common land.

The council properly referred the application to the Secretary of State for Environment, Food and Rural Affairs for determination, and an inspector ruled in favour of BAL, contrary to the objections of the society, commoners, and local people, and the representations of the council.

The council successfully challenged the inspector's decision in the high court, with the society intervening in support of the council's challenge. The high court found that the inspector's decision was flawed, and went 'way beyond any reasonable meaning that could be given to the phrase "the curtilage of a building"'. The court of appeal agreed. The inspector's decision was quashed.

BAL sought leave from the supreme court to appeal, but this was refused,

Blackbushe aerodrome (BAL claimed that the aerodrome was curtilage of the control tower, visible back right).

Lord Hodge, Lord Leggatt, and Lady Rose determining that 'the application does not raise any arguable point of law'.

Any future determination of BAL's application must confine itself to the deregistration of land intimately associated with the terminal building. The aerodrome therefore will remain as registered common land.

This is not the end of the story. Blackbushe aerodrome continues to occupy a large part of Yateley Common to the exclusion of the public and of the commoners who have rights exercisable over the land. BAL also interferes with free public access along Welsh drive, a public bridleway across the common. We shall not be satisfied until the aerodrome becomes accessible common land once more, and Yateley Common finally is freed of the legacy of wartime requisitioning.

The application is expected to be referred again to the secretary of state for a new determination, but any inspector will be constrained by the clear position of the courts that the aerodrome cannot be curtilage of its terminal building.

This judgment will have far-reaching and positive implications for common land and we are grateful to Hampshire County Council for taking the lead in challenging the Secretary of State's decision.

End of the road for Rollright

Open Spaces Society v *Secretary of State for Environment, Food and Rural Affairs.*

Conversely, we deplore the supreme court's refusal of leave to appeal in the case of the diversion of Rollright footpath 7 in Oxfordshire, where the court of appeal's ruling has damaging implications for public paths throughout England and Wales.

Our Oxfordshire correspondent, Chris Hall, wrote in *Open Space* summer 2020 (page 13) about his efforts to defeat the diversion of this footpath at a public inquiry in 2019. The diversion takes the path from its charming, direct route with good views of the handsome neo-Georgian residence, Manor Farmhouse, owned by Prudence Macleod (daughter of Rupert Murdoch), onto a less direct path behind a high embankment and next to banausic modern farm buildings with no views of Manor Farm.

In October 2019, the inspector, Mrs K R Saward, confirmed the order. She found that the 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 (the 1980 act) section 119 (6)(a). But she then decided that this was insignificant because it affected only a small section of footpath 7 and she 'weighed' the loss of enjoyment against the owner's interest. Predictably, the privacy and security of the family which, she said, 'has a high media profile', 'outweighed' the public's enjoyment.

Satisfied

Before an order is made under section 119 of the 1980 act, the highway authority must be satisfied of the matters in subsection (1), ie that, 'in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient' to divert the path. In this case the order was made in the interests of the owners and occupiers.

By subsection (6), before confirming the order, the highway authority, or the secretary of state (delegated to an inspector) in the case of an opposed order, must be satisfied that the diversion is expedient as mentioned in subsection (1), 'and further, that the path … will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which— (a) the diversion would have on public enjoyment of the path or way as a whole, (b) the coming into operation of the order would have as respects other land served by the existing public right of way, and (c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it'.

The society challenged the weighing of enjoyment against private interests, on

The damage caused by the 'balancing exercise': the view of the C17 farmhouse (left) is sacrificed to that of today's farm buildings (right).

the grounds that private interests are already accounted for in section 119(1). We said that the factors which are set out in section 119(6) are the only matters which can be taken into account when determining the *expediency* of the diversion.

We submitted that the inspector erred in law by taking into account the benefit to the landowner of the diversion when assessing expediency. If the inspector's assessment was correct, all diversions under section 119 would potentially be subject to a balancing exercise. This would frequently place an unwarranted trump-card in the hands of the landowner seeking the diversion, making the balancing exercise a foregone conclusion, with the inspector considering the landowner's interest twice.

Permission

The high court judge, Mrs Justice Leven, found against us on 5 May 2020, but the Rt Hon Lord Justice Lewison, gave us permission to appeal.

We therefore proceeded to an online hearing in the court of appeal before Lady Justice King, Lord Justice Lewis, and Lady Justice Elisabeth Laing. The judgment was delivered on 25 February 2021 ([2021] EWCA Civ 241).

The result was deeply disappointing. Giving the leading judgment, Lord Justice Lewis said that the appeal raised one principal issue concerning the proper interpretation of section 119(6) of the 1980 act. This was whether a decision-maker deciding if it is expedient to confirm a diversion order is limited to considering the three factors referred to in section 119(6) (a) to (c) or whether the decision-maker is entitled to have regard to other considerations including, if appropriate, the interests of the owner or occupier of the land crossed by the path.

Distinct

Our counsel, George Laurence QC and Simon Adamyk of New Square Chambers, argued that, in subsection (6), the decision-maker had to consider three distinct and separate matters.

First, the decision-maker must be satisfied that the diversion was expedient in the interests of the owner, occupier or public. Second the decision-maker had to be satisfied that the path would not be substantially less convenient to the public. Third the decision-maker had to determine if it were expedient to confirm the order considering only the matters specified in paragraphs (a) to (c) and (under subsection (6A)) the provisions of any rights-of-way improvement plan. Their excellent arguments were contested by Ned Westaway of Francis Taylor Building, counsel for the secretary of state.

Lord Justice Lewis, after considering the arguments, concluded that 'the decision-maker must have regard to the effect of the matters specified in paragraphs (a) to (c) … and may have regard to any other relevant matter, including if appropriate the interests of the owner or occupier of the land over which the path currently passes, or the wider public interest'. The other two judges agreed.

We sought permission to appeal to the supreme court but this was rejected by Lord Briggs, Lord Stephens, and Lady Rose 'because the application does not raise an arguable point of law'. No reasons were given, which is a distressing end to a long battle.

Biased

We have always considered section 119 to be both badly drafted and biased against the public, and this judgment exacerbates the problem. We need to look out for further cases which would enable us to return to these arguments in the supreme court.

In the meantime, we shall continue to oppose diversions which are promoted by owners and occupiers in their private interests, and hope that inspectors, in carrying out the egregious 'balancing exercise', will find in favour of the public.

The smallest Royal Park

London Historic Parks and Gardens Trust (LHPGT) v *Minister of State for Housing and Westminster City Council.*

On 8 April the high court overturned the approval for a holocaust memorial and learning centre in Victoria Tower Gardens, London Borough of Westminster. The judge, Mrs Justice Thornton, ruled that the inspector who recommended approval of the project failed to take into account the London County Council (Improvements) Act 1900 (the 1900 act) which applied to the land. The act required the land to be used 'as a garden open to the public and as an integral part of the existing Victoria Tower Garden'.

The inspector's recommendation had been accepted by the then housing minister, Christopher Pincher, in July 2021. That decision was challenged by the LHPGT.

After attending a consultation meeting in 2017, and lobbying The Royal Parks, we objected to the planning application in 2019. We expressed no view on the principle of the memorial, but opposed its location in the garden. This is the smallest of the Royal Parks and the loss of open space would have amounted to nearly 30 per cent rather than the seven per cent mentioned in the application. There would have been a huge impact on the garden's public-amenity value.

Concluded

The judge concluded that the 1900 act imposed an 'enduring obligation' to retain the garden as a public garden. The inspector had identified the 'deliverability' and availability of the site as greatly in its favour. The act was a 'potential impediment to the delivery of the scheme' and therefore was held to be a material consideration in the planning process. The court's decision quashes the permission.

This is an important outcome for the protection of London's open spaces. ❐

Victoria Tower Gardens. © Gareth James, Creative Commons Licence.

Far & Wide

Ignored by PINS

We have many frustrations about the way the Planning Inspectorate (PINS), which determines applications for works on common land on behalf of the environment secretary, discharges its duty. A recent concern is the decision to allow the replacement of boundary fencing on Hergest Ridge and Hanter Hill common near Kington in Herefordshire.

When we were consulted about this application we photographed the existing fence. We said that, if the replacement fencing was truly on the boundary, it was not on the common and would not need consent. However, the existing fence did appear, in places at least, to be within the common. Therefore we objected,

Fence on north-east side of common, south of Offa's Dyke path, appears to be inside the common boundary.

pointing out that where the fence is inside the boundary it sterilises part of the common, creating a no-man's land which is inaccessible to the public and the commoners' livestock. We called on the applicant to set back the fence line where necessary, so that no consent would be required.

We also pointed out that although the common had been fenced for some time, there was no trace of any previous application for these works so far as they related to fencing on the common itself.

We were surprised to receive the decision letter from PINS in which the inspector, Paul Freer, granted consent and said: 'I have not been made aware of any claims being made, by the OSS or others, that the existing fence has diminished the extent of the common or reduced accessibility to it'. Yet that is precisely what we did say. (*Ref COM/3284928, 4 April 2022.*)

Wales Coast Path celebrated

The Welsh government, marking the tenth anniversary of the Wales Coast Path, invited Huw-Irranca Davies (SM for Ogmore) to lead a review on how to maximise opportunities for the future.

The review states that the path must be 'viewed as part of a wider coastal corridor or zone to achieve maximum access and engagement and wider economic benefits'; and the path 'should inspire and provide opportunity for behaviour change in relation to both public health and the environment'.

There are 19 recommendations, ranging from local to global, and across generations. They include the following.

A Wales Coast Path National Partnership Group, comprising Natural Resources Wales and local and national park authorities along the route, has been established. The group, with the local access fora, should identify, map, and promote routes for different users, along and from the path. It should work with

Left: Wales Coast Path near Rhossili, Gower. Right: the official sign.

schools to enable every child in Wales to have at least one day's walk on the path, or a long-distance trail, before leaving primary school.

The Welsh government should devise mechanisms to enable the route to be amended as a rapid response to erosion; and the government should include the development and maintenance of the path, and access to it, in the forthcoming sustainable farming scheme.

Our AGM

Come to our annual general meeting on Thursday 7 July at 11am at Friends' House, Euston Road, London NW1 2BJ, or join us by video-conference. Details are enclosed with this issue of *Open Space*.

It is encouraging that Welsh ministers have greeted the report with a degree of enthusiasm, which gives us hope for its implementation.

Gloom about Glover

We are less optimistic about the Westminster government's intention to implement the recommendations of the Glover review on national parks and areas of outstanding natural beauty.

The government published its response as a further consultation. We said that the government's ambitions do not go far enough and it is unclear how they can be achieved. The response talks of proposed changes to the purposes of protected landscapes and, importantly, a new statutory duty on public bodies to further these purposes—but the recent queen's speech was silent on this.

The proposals for access place an unpleasant emphasis on 'managing visitor pressure', with the suggestion of extending public space protection orders (see page 2), and traffic regulation orders to control the amount and type of traffic on unsealed roads. No evidence is provided that these are needed.

The government advocates 'private and blended financing models' to achieve its vision. We consider this an odious suggestion. Public funding for public goods, we say.

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

Cross-party group

The society is a member of the new cross-party group, chaired by Huw Irranca-Davies (see above), for the outdoor-activity sector in Wales.

The group aims to inform and influence policy; to elevate the status of the outdoor-activity sector in Wales and support its sustainable growth, and to promote equitable access to the natural environment.

The user groups are developing a statement on access, so that we can put joint pressure on the Welsh government to implement the reforms on which it sought our views two years ago. These include greater access to the countryside and coast, and better mapping and information.

We look forward to meeting the deputy minister for climate change, Lee Waters, in June, to put our case.

Hello Abbie and Denise

We are pleased to welcome our new digital content manager, Abbie Cavendish. She has a background in the third sector, working with a number of national and local charities such as the Scouts, and Great Ormond Street Hospital Children's Charity, to develop their digital campaigns and expand their audiences.

Born and bred a Londoner, Abbie loves to escape to the country, enjoying long walks with her partner.

Abbie Cavendish.

Denise Metcalfe is our newest, and most northerly, local correspondent, covering the former district of Alnwick in Northumberland. Denise is a retired dentist with a law degree. Her hobbies are gardening, and wildlife photography. She is a Coast Care volunteer and a warden for the coast path between Craster and Newton-by the-Sea. She is involved in turning the local quarry into a nature reserve.

Anger at The Sands

We reported our disappointment at losing the fight to stop Durham County Council from exchanging The Sands common land in order to provide a car park next to its new, £50-million, headquarters (*OS* spring 2022 page 10). Consequently, we were angered to discover that the council does not in any case intend to use the site for that purpose.

Instead, it will use buildings elsewhere and has sold the vacant headquarters and former common to Durham University for its business school. Clearly, it will make a lot of money out of this transaction—at the expense of historic common land. Not for the first time, we find that assurances given in applications for common-land exchange are not adhered to.

Levelling-up?

As we went to press, the government published its Levelling-up and Regeneration Bill which, despite its title, does nothing to level up the inequalities in open space provision.

While we are relieved that the planning reforms proposed in 2020 have largely been abandoned, we are concerned that there could be severe loss of democracy from the planning process, with changes to neighbourhood and local plans, centralisation by government, and failure to address the climate crisis. We shall work with members of the Better Planning Coalition to seek amendments and improvements. ❐

Path Issues

Boat Lane recorded

In 2003 our then local correspondent for south Herefordshire, Owen Morgan, submitted an application to record a footpath in the parishes of Goodrich and Walton. Nearly 20 years later the route has been added to the definitive map as a restricted byway.

The route for which Owen applied runs from NGR SO5794-2100 on the C1274 road between Ross-on-Wye and Walford, for 851 metres south to the River Wye. It resumes on the south bank, running to the west of Goodrich Castle for a further 742 metres to join the C1260 road in Goodrich (NGR SO5744-1948).

Of the total distance of 1,671 metres, 78 metres alongside the River Wye were already recorded as a public footpath and have been upgraded to restricted byway.

Owen was supported by Heather Hurley and Virginia Morgan, president and vice-president of Ross-on-Wye Civic Society. Heather, a local historian, was able to supply critical maps and some documentary evidence. Virginia and her family completed evidence forms in 2004 describing their use of Boat Lane, and providing a photograph from 1976 of a family outing on the riverbank.

Boat Lane on the north bank of the River Wye, Goodrich Castle opposite. Photo: Heather Hurley.

Herefordshire Council did its own research and determined that the route should be recorded as a restricted byway. It made an order in 2018 and there were two objections from local landowners. The matter was determined by a planning inspector, Gareth W Thomas, who confirmed the order.

Documentary evidence

There was substantial documentary evidence for the path, much of it submitted by Owen, but more was found by the council. Early maps, tithe records, and highway records were among the documents on which the council relied. In particular, there was evidence of a ferry crossing the River Wye below Goodrich Castle, marked by two milestones, but the construction of Kerne Bridge to the south-east in 1828 led to the ferry's demise. There was also some user evidence.

The objectors did not dispute the historical evidence and their objection was more about the impact that the route would have on their properties, which was not relevant.

Now that the route has at last been added to the map, it needs to be put in good order. There is a 'no thoroughfare' notice on the gate at the northern end which is misleading, and the path in Goodrich parish, south of the river, is overgrown and obstructed. Herefordshire Council needs to sort it.

We congratulate Owen, and thank

Virginia and Heather for their persistence and the council for its further research in this case. It has paid off in the end. (*Ref ROW/3249177, 2 Nov 2021.*)

Cookham path-coup

When the Royal Borough of Windsor and Maidenhead consulted on the diversion of Cookham footpaths 17 and 59, there was an outcry from users. The landowner, Tom Copas, wanted to divert two paths, from across fields to the field edge, 'to allow more economic farming practices and create a longer circular route for public use around Mount Farm'.

The landowner had been working on the public for some time. He had installed notices at the ends of the paths, advocating his proposals with quick response (QR) codes encouraging people to say online what they enjoyed about the proposed diversion (with no invitation to say they did not like it).

There were 18 objections to the proposals, and the council's officer recommended against the diversion (under section 119 of the Highways Act 1980) because it did not meet the 'convenience' or 'enjoyment' tests. Despite this, the rights-of-way and highway licensing panel agreed, on the chair's casting vote, to make an order.

Cycle path

The council then made two orders. The overall effect was to divert a direct path across two fields onto a track around the edge. This track was a permitted cycle path, and the permission was to continue.

We objected strongly to both orders. Firstly, we said that the order for footpath 59 was incapable of confirmation, since the two orders were separate and not interdependent, and the new termination point for footpath 59 did not exist unless footpath 17 was diverted to connect to it.

We also noted that the orders were made in the interests of the landowner and the

Cross-field footpath 17. The diversion would have pushed it to the edge.

public, but there was no positive benefit to the public. The diversions introduced two dog-legs into a direct route which ran all the way to the village of Furze Platt to the south-east. Views of Cliveden Manor to the east, and of Windsor Castle to the south-east, were lost. And there was the issue of shared use with cyclists.

The landowner posted further notices on the paths, urging people to write again to the council.

The Ramblers, Cookham Parish Council, Cookham Society, and the local access forum also objected, as did 74 individuals. There were only two expressions of support. The officer again recommended the council not to proceed with the plans.

This time the rights-of-way panel agreed *nem con* to rescind the orders, a clear message to Mr Copas that his diversions are unwelcome.

Carmarthenshire LAF

We are pleased that our trustee, Tara-Jane Sutcliffe, has joined the Carmarthenshire local access forum (LAF).

Carmarthenshire County Council, the highway authority for a deeply rural area, has long struggled to maintain its path network, and it is good to know that the LAF is keeping a close watch on this. The council has a hierarchy of paths for maintenance, which we dislike because

the lower categories tend to be neglected. We hope the LAF keeps this issue on its agenda and continues to provide constructive challenge to the council.

Regrettably, the council is no longer funding its rights-of-way improvement plan, and is forced to deliver its pathwork through projects.

It would certainly help the council if agricultural payments included money for access, with penalties for landowners and farmers who do not maintain their paths. With other organisations, we are pressing the senedd to introduce such a regime as part of the new, post-Brexit, sustainable farming scheme in Wales.

Crusade in Cornwall

Although Cornwall is a popular tourism area, and its paths are part of the county's welcome to visitors, the council has long neglected many of its rights of way. User groups have served notices on the council, under section 130A of the Highways Act 1980, to reopen blocked paths, but the council wriggles its way out of doing anything. It is fortunate in having an exceptional enforcement officer, Linda Holloway, but she struggles from lack of resources.

With the British Horse Society and Ramblers we recently met council officers. We pressed for greater enforcement against path blockers, court action, and publicity to deter potential path-abusers.

Notices

Meanwhile, Lucy Wilson, our north Cornwall local correspondent, is serving notices on the council under section 130A, and pursuing cases with the ombudsman, in an effort to get blocked paths reopened.

One such is Davidstow footpath 1, pictured above. Lucy reported this as obstructed in 2020 and the council's agent, Cormac, acknowledged airily that it is 'one of a whole series of paths in this parish that have been unusable for decades'.

Says Lucy: 'Despite serving a section 130A notice, and the early signs of progress last December resulting from a

Davidstow footpath 1.

form 4 [the final notice before the complaint goes to the magistrates' court] served on the highway authority, it looks likely that I must start the enforcement process again with another s130A notice. We're going round in circles, and it's such a waste of everybody's time.'

After 2026

When the 2026 guillotine was, fortunately, dropped (*OS* spring 2022 page 2), the stakeholder working group (landowners, local authorities, and users) pressed Defra to implement the remainder of the agreed package, most of which is non-contentious.

Defra has accepted this, and will consider with the group the regulations needed to speed up the processing of applications for additions to the definitive map and statement, and updated guidance.

Meanwhile, Defra intends to expedite the right for landowners to apply for path changes (not part of the original package). We remain concerned about this and will endeavour to minimise the damage to users' interests. ❐

Reviews

Our Common Land: the law and history of common land and village greens, 7th edition by Paul Clayden MA (Open Spaces Society, £25).

Paul Clayden succeeded Ian Campbell as general secretary of the Open Spaces Society in 1976. One of his tasks was to produce a third edition of Ian's guide to the law of commons and village greens. This was published in 1980. A fourth edition was called for; this was named *Our Common Land: the law and history of common land and village greens* and appeared under his sole authorship in 1984. The book under review is the seventh edition.

Sadly, Paul died shortly after completing the draft text; thus the book stands as a memorial to someone who was devoted to the cause of the preservation and enhancement of our open spaces. Kate Ashbrook, as chief editor, led a team from the society which prepared the book for the press.

Challenge

The author of any text in this area faces a formidable challenge. The law of commons is intrinsically complex, having its origins in arrangements which predate the Norman Conquest. That law was subject to major statutory intervention in 1965 and 2006; there has been extensive litigation; the law is different in Wales; in England it is different depending on where you live.

Within a short compass, Clayden provides a masterly exposition of this complicated area of law. It will be of enormous value to those who, for whatever reason, require a short and authoritative summary of the law. They will range from those who are engaging with the law of commons for the first time to experienced practitioners in this area. For anyone grappling with a difficult point, it will be a good place to start before perhaps turning to the fuller Gadsden and Cousins on *Commons and Greens* (3rd edition (2020)) (of which Hugh Craddock, who did much of the revision of *Our Common Land*, is now one of the authors). But in an area where sometimes inadequate legislation regulates often obscure common law, they will rapidly appreciate that, although a book may provide the context for the question, it may not always supply the answer.

Focus

No one can fully understand the law of commons without an appreciation of their history and indeed it would be possible to seek to expound the law entirely through that history. By contrast, the focus of this book is essentially on the statutory provisions and commentary on what they regulate. In the process, some of the history has necessarily been sacrificed.

Also, for whatever reason, recent editions contain just a bare text. My much-used (and rebound) copy of the fourth edition includes some interesting photographs.

One which has always stuck in my mind is of the redoubtable Lady (Sylvia) Sayer shown in 1960 exercising her rights of turbary on Riddon Ridge, Dartmoor. Our open spaces survive because of the efforts of the individuals, communities and bodies like the Open Spaces Society to preserve them. That the law as expounded in *Our Common Land* is now generally supportive of the preservation of open space is a tribute to their efforts.

Philip Petchey, barrister, Francis Taylor Building

Forbidden Kinder: the 1932 mass trespass revisited by Keith Warrender (Willow Publishing, £17.95).

Many books have been written about the mass trespass, but this is probably the most detailed yet.

As I wrote in the foreword: 'Not only do we have here a variety of descriptions of the trespass itself, from those who took part and their descendants, we are also presented with details of many of the trespassers' lives, and of others in the struggle for access. The book concludes with short essays by current figures for whom Kinder the battle, and Kinder the mountain, have a place in their hearts. The scene is set, the context explained, the significance explored, and the aftermath related.'

This book is a fitting memorial to the brave trespassers.

The Women Who Saved the English Countryside by Matthew Kelly (Yale University Press, £20). Images by Sarah Young.

Sylvia Sayer, mentioned by Philip Petchey (page 15), is one of the four women featured in Matthew Kelly's fascinating book. The others are Octavia Hill, Beatrix Potter, and Pauline Dower.

Chapter-opener illustration of Pauline Dower, © Sarah Young.

It is admirable that Kelly has chosen to recognise these four women. They certainly made an impact, with their very different but effective campaigning methods, hampered by their sex.

Ringmoor training exercises, oil painting by Sylvia Sayer (1968).

I should declare an interest because Sayer was my mentor, and I was delighted that the book starts with a description of her colourful protest, which made the front page of the *Times* on 22 February 1967, when she marched onto Ringmoor Down on Dartmoor to exercise her common rights in the face of military training.

Her indomitable spirit was typical of these four women who helped to generate environmental consciousness. None took no for an answer and all were the scourge of those who barred their way, and threatened the places they loved.

The four

Hill, founder of the National Trust and early committee member of the OSS, was a moralist and reformer; Potter, best known for her children's stories, was a generous benefactor to the National Trust and successful hill-farmer; Dower, the longest-serving woman on the National Parks Commission, worked tirelessly for the parks and especially her beloved Northumberland; and Sayer, also a committee member of OSS, fought doggedly for Dartmoor.

Well-referenced, this work is in places rather too detailed and laboured, with some irritating errors, but it is a valuable record of four women who made a significant difference to the countryside we enjoy today. **KA**

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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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