

# Open Space

Spring 2023

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 Open  
Spaces  
*Society*

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- Recording commons
- Portishead green

Campaigning since  
**1865**

# Open Space

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## Cover story

Harrogate Stray in North Yorkshire. We have applied for this magnificent 80-hectare stretch of open land in the heart of Harrogate to be registered as common (see page 4). Although the land is regulated under other legislation, registration as common would secure the whole area for ever.



## Lost in the detail?

**At the end of February we still awaited action on access in the environmental land management scheme (ELMS). Defra officials are now seeking our views, but it doesn't feel like the outcome will amount to much.**

In December, the environment secretary, Thérèse Coffey, was quizzed by the Environment, Food and Rural Affairs Committee. Barry Gardiner, Labour MP for Brent North, asked her whether the public-access element of ELMS had been dropped. She said 'I haven't seen quite that level of detail so I can't give you a comment either way'. This despite the numerous promises made by ministers that access would be one of the public goods to be funded by ELMS.

### Prospectus

Miss Coffey said he should wait for the 'entire prospectus' to be published in January. But that prospectus proved to be a disappointment, presumably because she never did bother with that level of detail. On money for access it says: 'We are also exploring how we can pay for actions covering permissive access, managing existing access pressures on land and water [which means less access], and expanding education access' (which is already being funded).

The total government spending on farming is £2.4 billion a year, and for more than six years we have been pressing in vain for more money out of this budget to be spent on new and better access. Now government has suddenly

adopted a new pledge in its Environmental Improvement Plan, a five-year scheme to restore nature and to improve the environmental quality of air, water and land. The pledge is that everyone should live within a 15-minute walk of 'green or blue space' (page 9).

Brilliant! But the fact is that 38 per cent of the population of England lives beyond the 15-minute range. The prospect that ministers who have repeatedly broken their promises for access under ELMS, and who have made it harder to register town and village greens, will magically place 21.5 million people close to green space within a half decade is incredible.

Government's apathy, if not hostility, towards access is out of step with the times. The Dartmoor camping case (page 3) has catalysed action for freedom to roam. Those involved may be vague about exactly what they seek, but the threat to camping and the eloquence of their message have captured the public's imagination and caused the Labour Party to promise a right-to-roam act.

### Opportunity

This gives us the welcome opportunity to work with sympathetic politicians, influence their manifestos and then, depending on the outcome of the next election, help them introduce measures which really will provide fair access, close to where people live.

Fortunately, many politicians, unlike Miss Coffey, know that access is far more than 'a level of detail'. **KJA**

# Taking action



## Monken Hadley for ever

**William Boyes of the Monken Hadley Common Trust explains how the common is now protected by its own act of parliament.**

Monken Hadley Common comprises about 70 hectares of mixed woodland and grassland on the northern edge of the London Borough of Barnet. It is the seventh biggest common in Greater London and the largest in private ownership.

It was vested in the churchwardens of the parish church of Monken Hadley in the County of Middlesex by the Enfield Chase Act 1777. Section 5 provided for the common to be held in trust for those having common rights at the time the act was passed.

Over 100 properties scattered around Monken Hadley and High Barnet had rights of common and, until grazing ceased in the early 1950s, many of the commoners took an active part in the management of the common under the direction of the churchwardens. However, the commoners' and churchwardens' involvement steadily declined and in 1981 a committee was formed to take over the management. In 1997, after the London Boroughs of Barnet and Enfield stopped



*Monken Hadley volunteers in the woods.*

their annual grants, a charity was established to provide financial support.

Due to the lack of involvement of the commoners, who had the rule-making power under the act, the legal validity of the rules was uncertain and it was impossible to comply with certain provisions of the 1777 act. In 2019 the committee decided that piecemeal reform was impractical and a bill should be promoted in parliament to establish a modern structure for the ownership and management of the common. A consultation, outlining the problems and possible solutions, was undertaken.

## Petition

In November 2019 a petition was lodged in parliament and, after committee hearings in both houses and numerous amendments, the bill became law on 28 April 2022.

The Monken Hadley Common Trust, a charitable incorporated organisation with a membership, has been registered to take ownership of the common. The act came into force on 1 December 2022, the day appointed by the churchwardens, and ownership has been transferred.

A primary object of the trust, written into the act and its constitution, is the preservation of the common as a place for public recreation and enjoyment, and it is now secured for ever from development. Sadly, the public roads across the common will prevent it from reverting to the peaceful rural enclave that it used to be.

This has been a protracted and expensive process. For further information please contact [williamboyes@btinternet.com](mailto:williamboyes@btinternet.com), or go to [mhctrust.org.uk](http://mhctrust.org.uk). □



# Backpack backtrack

The judgment banning wild camping on the Dartmoor commons has had a profound impact—but the story is not ended.

**On 13 January, Sir Julian Flaux, Chancellor of the High Court, ruled that there is no right to backpack (or wild) camp on the Dartmoor commons without the landowner's permission: *Darwall v Dartmoor National Park Authority* [2023] EWHC 35 (Ch).**

This came as a shock not least to the Dartmoor National Park Authority (DNPA) itself. Two weeks later its members decided unanimously to seek leave to appeal.

The Dartmoor Commons Act 1985 was a pioneering piece of legislation. Section 10 states: 'the public shall have a right of access to the commons on foot and horseback for the purpose of open-air recreation'. There is no definition of open-air recreation except to say what it does not include. Camping is not mentioned, although many other activities are.

## Bylaws

Alexander and Diana Darwall bought Stall Moor common, near Cornwood on south-west Dartmoor, in 2013. When the DNPA decided, post-pandemic, to review its bylaws for the Dartmoor commons, including the map showing where backpack camping was not permitted, the Darwalls objected, claiming that the right of access under the 1985 act did not include backpack camping. The DNPA disagreed and the Darwalls applied to the court for a declaration in their favour.

The judge concluded that open-air recreation in section 10 did not include a right to wild camp without permission: wild camping is 'a facility to enable the person in question to enjoy the open-air recreation of hiking', he averred.

But there are other interpretations, especially if one studies the legislation from which the 1985 act is drawn, such as the National Parks and Access to the Countryside Act 1949. The society is seeking leave to intervene in the court action, to add weight and additional argument.

The challenge to backpack camping, which has always been a nominal trespass in the rest of upland England and Wales, has struck a chord in the public's collective heart. It provoked a peaceful protest of more than 3,000 people on Stall Moor on 21 January, and has led to calls for greater freedoms and rights.

It has also highlighted the severe under-



*Lints Tor: common land on northern Dartmoor.*

funding of national park authorities—the DNPA is acting in the public interest but it will need support from crowd-funding because government starves our protected landscapes of the resources they need.

Dartmoor is special in many ways and, until this judgment, was believed to be the only place in England with a right to backpack camping. We trust that the appeal court will confirm this right exists. □

# Retrieving our commons

Our commons re-registration officer, Frances Kerner, is beavering away to find lost commons.

## **The planning inspectorate has granted our application to register two pieces of land near Blean, two miles north of Canterbury in Kent.**

In 1969 and under the Commons Registration Act 1965, an area of land known as Radfall Road, running through Blean Woods, was registered as common land. The application included two small



*Common land at Radfall Road.*

parcels of land, comprising about one hectare, on either side but, following an agreement between the applicant and an objector, those parcels were excluded from registration. We were able to provide evidence that the excluded land is waste land of a manor and therefore qualified for registration.

## **Lizard Downs**

Thanks to our efforts, splendid open moorland on Lizard Downs, part of the national nature reserve, in west Cornwall has been registered.

The 116 hectares failed to be finally registered under the Commons Registration Act 1965 (the 1965 act). The Commons Act 2006 (the 2006 act) reopened the door for registration.

The registration under the 1965 act was

cancelled owing to objections. However, in the late nineteenth century Lizard Downs was recognised as common land which could be inclosed (ie the common rights extinguished) under the Inclosure and Regulation (Lizard Common) Provisional Orders Confirmation Act 1880. The inclosure did not occur owing to the expense of implementation, but this act was evidence that the land was common. Following our application, Cornwall Council agreed to register it.

## **Harrogate Stray**

We have applied to North Yorkshire County Council to register Harrogate Stray. It is common land but was exempted from registration under the 1965 act. It has been regulated over the years by a number of pieces of legislation (the Forest of Knaresborough (Yorkshire) Inclosure Act 1770, the Harrogate Corporation Act 1893, and the Harrogate Stray Act 1985) with inconsistencies between them. Registration of the whole area under the 2006 act will secure its status for ever.

We are grateful to the Jack and Irene Candy bequest which funds this work.



*Harrogate Stray alongside York Place.*



## Barking Tye

*The Open Spaces Society v Secretary of State for Environment, Food and Rural Affairs* [2002] EWHC 3044 (Admin).

The society challenged the decision of an inspector, appointed by the environment secretary, to grant consent under section 38 of the Commons Act 2006 (the 2006 act) for works on common land at Barking Tye, two miles west of Needham Market in mid-Suffolk.

The works comprised a shared vehicular access covering 70 square metres of common land at its north-east end. This was to serve a proposed development site of nine dwellings (for which planning permission had been given) immediately adjoining the common. The access road would link the site with the nearby B1078 Barking Road.

## Opposing

In opposing the application, the society had questioned why the access road was needed, since there was an existing vehicular access off the common close by. The parish council, as landowner, had accepted an offer of £190,000 for an easement over the common and, presumably, the owner of the adjacent vehicular access might come to an agreement with the developer for a similar inducement. The society argued that the developer, Ruby Homes (East Anglia) Ltd, should justify its decision.

Even if need were shown, the society said, the developer should have made an application under section 16 of the 2006 act to deregister the common affected and propose an exchange of land. The roadworks were incompatible with the secretary of state's *Common Land*

*Consents Policy* (November 2015) since they did not confer any wider public benefit, a requirement for applications under section 38. Natural England objected in similar terms.

After further correspondence, the inspector, Edward Cousins (barrister), granted the application on 18 January 2022. The society challenged the decision by judicial review in the high court.

## Dismissed

Sir Ross Cranston, sitting as a high court judge, issued his judgment on 30 November 2022. Although he dismissed the appeal on the particular facts of the case, he accepted many of the society's arguments. He provided important clarification on the principles to be taken into account when determining an application under section 38.

The judge considered the 2015 policy and stated [judgment paragraph 56]: 'In my view the opening sentence of paragraph 4.3 could not be clearer: "The secretary of state will wish to know what alternatives have been considered to the application proposal. ... Therefore, under the policy, applicants for consents must adduce evidence of the alternatives they have considered and, if they have rejected them, they should generally offer a proper explanation as to why they have done so."'

Sir Ross said that 'an applicant may need to consider a section 16(1) application as an alternative in the circumstances of a particular section 38(1) application and explain (if that is the position) why it is impossible or undesirable ... The rejection of potential alternatives must be properly explained' [58] and [59].



The affected area of Barking Tye common looking south-east from Barking Road.  
© Google streetview.

He next considered the wider public benefit: ‘Works having a permanent impact must confer a wider public benefit and that impact must not be significant’ [61]. He concluded: ‘The upshot is that permanent works on a common which require section 38 consent are to be avoided if possible unless their effect is to maintain or improve the condition of the common. It is difficult to conceive how a paved vehicular way across a common to serve an adjoining development (or otherwise) will maintain or improve the common. That underlines the need for applicants to explore and explain suitable alternatives’ [63].

### Analyse

He went on to analyse the society’s case, saying ‘the policy requires an applicant to consider alternatives to any application it proposes. It is for the applicant to produce evidence sufficient to persuade an inspector that alternatives have been properly considered and rejected’ [69]. He referred to the two alternatives presented by the society and said that the inspector had to take both into account.

Reading thus far, one would have thought the society would win the appeal. However, when the judge came to analyse the way in which the inspector reached his conclusion, he did not find that the inspector had committed a public-law error. He considered that [76] ‘there are sufficient reasons in the inspector’s decision leading to his

departure from the policy in what he regarded as the specific circumstances of this case’.

We are grateful to our legal team, George Laurence KC and Simon Adamyk of New Square Chambers, and Matthew McFeeley of Richard Buxton, Solicitors.

### Avoiding the trigger

*R (on the Application of Bellway Homes Ltd) v Kent County Council* [2022] EWHC 2593 (Admin).

Bellway Homes challenged by judicial review a finding by Kent County Council (KCC) that a ‘trigger event’ had not occurred so as to prevent an application to register land as a town or village green (TVG) under section 15 of the Commons Act 2006 (‘the 2006 act’).

Under section 15 of the 2006 act it is possible to register land as a TVG if it has been used as of right for informal recreation for at least 20 years by local people. However, the right to register the land does not apply if that land is subject to a ‘trigger event’ listed in schedule 1A (in Wales, schedule 1B). This includes identification in the development plan for potential development (paragraph 4 of schedule 1A).

On 8 November 2019 Lisa (Lady) Laws applied under section 15 of the 2006 act to the commons registration authority, KCC, to register as a TVG land at Two Fields, Westbere, four miles north-east of



Canterbury in Kent. The land comprises about 15 hectares of mixed woodland, open grassland, and scrub. The western part of the site is owned by Bellway Homes Ltd.

On 30 July 2020 Bellway wrote to KCC that the prior adoption of the Canterbury District Local Plan (CDLP) constituted a 'trigger event', because policy OS6 identified the site for potential development; thus there was no opportunity to register the land as TVG.

KCC referred this matter to a non-statutory public inquiry and appointed David Forsdick KC to report solely on whether the land was subject to a trigger event. Mr Forsdick concluded that a trigger event had not occurred. KCC decided to determine the application. Bellway Homes challenged this in the high court, and the case was heard by the Hon Mr Justice Holgate.

### Judgment

In his judgment of 14 October 2022, Holgate J noted that there appeared to be only one authority on the meaning and application of the 'trigger event' in which a development plan identifies land for potential development. This was *R (Cooper Estates Strategic Land Limited) v Wiltshire Council*. In *Cooper*, it was held that in order to be a trigger event, the development plan itself must define the area for potential development, but that this is a broad concept and the area



*The potential new green.* © Chris Boucher, Creative Commons Licence.

need not be restricted to the land in question.

The claimant's case was focused on policy OS6 of the CDLP. This policy is concerned with 'green gaps' which aim to retain separate identities of existing settlements by preventing their coalescence through development.

### Real question

The judge said that the real question was wider, namely whether policy OS6, in the context of the development plan as a whole, constituted a trigger event. This case was different from *Cooper*: the land lies outside a settlement boundary and there is no presumption in favour of any development. The CDLP does not suggest that there is any need for development in any of the green gaps. The object of policy OS6 is to protect gaps, while allowing for development in closely-defined circumstances.

The judge found that 'policy OS6 was similar to other policies applicable in rural areas of the district which, in essence, provide criteria applicable generally throughout the relevant area for assessing the acceptability or otherwise of proposals which come forward. They do not themselves identify the land for potential development'.

Holgate J dismissed the claim. Thus there is no trigger event preventing KCC from determining the TVG application.

This case provides some useful additional analysis on the definition of a trigger event in relation to potential development, offering some comfort to those seeking to register land as TVG. It is not necessarily sufficient (to prevent application) if a policy in a development plan contemplates some possibility of development on a designated area of land: one must look at the policy in the context of the plan as a whole, to see whether the purpose of the policy is to facilitate or constrain development. □



## New green at Portishead

A new, 12.5-hectare village green has been registered at Portishead's former golf course in North Somerset, securing it for ever.

The land has been enjoyed for informal recreation for decades. It was purchased from Bristol City Council by the then Woodspring District Council, with a covenant which said that it was to be used as an open space for the enjoyment of the public. It then passed to North Somerset Council.

Eight years ago, local walkers found that the gate leading onto the golf course had been locked. They then discovered that there were plans to develop the land, supported by Portishead Town Council, and they started a campaign with a protest walk and petitions.

Fortunately, the local election in May 2019 changed the control of North Somerset Council and Portishead Town Council. Both councils agreed to follow our advice voluntarily to register the land as a village green.

We congratulate our member Ann Townsend and other local people for their persistence, which has certainly paid off.

## How topping

We have welcomed a decision to preserve as common land part of White Moss Common at Grasmere in the Lake District National Park.

The proprietor of How Top, a former farmhouse near Town End, applied under section 19 of the Commons Act 2006 to Cumbria County Council in October 2020 to deregister around 80 square metres of roadside land north of How Top. The applicant correctly claimed that this land was not included in the application of the National Trust to register Grasmere Common (including White Moss Common) in April 1968, and so asserted that it was registered by mistake and should now be removed from the register.

The society objected, noting that the land was intrinsically part of, and inseparable from, White Moss Common and had been used by grazing animals on the common



*New village green at Portishead, looking to the Severn estuary. Photo: Alan Harrison.*



*How Top: the rescued land is behind the stones in the centre of the photo. ©Eirian Evans, Creative Commons Licence.*

since time immemorial.

The council noted that, prior to the National Trust's application, the society itself had applied to register White Moss Common, including the disputed land, but had withdrawn its application on the assurance that the trust's application would achieve the same result. The council concluded that the land was correctly registered and the registration should stand. We have separately applied to register two small slivers adjacent to the wall which should have been included in the original registration.

### **New representatives**

We are pleased to have appointed Aidan Harris as our local correspondent for the former Chiltern District in Buckinghamshire. He is a trainee solicitor having worked in human-rights law, and is particularly interested in local heritage. We welcome back Nicholas Whitsun-Jones, who left us to move house and is now our correspondent for the former West Dorset District.

### **Goodbye**

We are sad that two long-standing local correspondents have retired.

Harry Scott covered Staffordshire, and Stoke-on-Trent City from 2004 to 2022; and Shropshire, and Telford & Wrekin Borough from 2010 to 2018. He saved many routes from diversion and extinguishment, and organised a team of

volunteers in Stoke-on-Trent to survey paths for the definitive map. He hopes that 850 routes will be added in time.

David Williams has retired from the London Borough of Hillingdon where he had worked prodigiously since 1996, with a spell as local correspondent for Ealing Borough from 1998 to 2008.

### **The 15-minute promise**

The government published its Environmental Improvement Plan (EIP) on 31 January. This is the five-year review, required by the Environment Act 2021, of the government's 25-year environment plan which set out the government's vision to help restore the natural environment.

One of the government's pledges in the EIP is that 'the public will benefit from a new commitment to access green space or water within a 15-minute walk from their home, such as woodlands, wetlands, parks and rivers'. The words are mouth-watering, but we are concerned about the lack of detail, timetable, and funding. The government's record on access provision is poor, and it has broken its many promises to include payments for new access in the Environmental Land Management Schemes: we are, not surprisingly, sceptical of this pledge.

Says Nicola Hodgson, one of our case officers: 'These new and existing spaces must have permanent public access, for

instance through dedication as town or village greens. There should be rights of access on lakes and rivers as well as beside them. Public paths must be created to connect people to these green spaces; they are useless if people must cross busy dangerous roads to get there. All this requires a great deal of thought, commitment and investment.'

## Levelling up

One problem with the EIP is that many of its targets are not legally binding. As one of 33 members of the Better Planning Coalition we are supporting amendments to the Levelling Up and Regeneration Bill, currently in the house of lords, which would impose legal targets for health, well-being and heritage.

We are also backing amendments drafted by the Campaign for National Parks to give them more protection, and one from the Ramblers to repeal the 2026 cut-off for claiming historic routes. That repeal was promised by government a year ago (os spring 2022 page 2).

## Award winners

Congratulations to our chairman Phil Wadey and long-standing member Sarah Bucks for winning the *Horse and Hound* Volunteer Award 2022 for their work on public paths and their guide to researching and recording historic routes, *Restoring the Record*.



*Sarah and Phil receive the award. Photo: Mark Weston.*

Says Phil: 'We are delighted that our efforts to train volunteers and save paths chimed with the voters. The threat of the 2026 cut-off date for recording historic paths has probably done more to galvanise research in the sector than any other action since the 1950s, and we are pleased to have eased understanding of the process and encouraged hundreds of people to get involved—not to mention the hundreds of applications we have each made in our home counties and beyond.'

## Football pitches kicked out

With local residents, we have scored a big win for public open space by defeating controversial plans for a



*Tooting Bec Common: saved.*

commercial football facility on Tooting Bec Common, Wandsworth, London.

Following a packed, seven-day inquiry, at which we were represented by our local correspondent Jeremy Clyne, the planning inspector, Richard Perrins, rejected the application, made under the Greater London Parks and Open Spaces Order 1967, for fenced and floodlit football-pitches on a secluded part of the common known as the Triangle Field.

The inspector concluded that the development, sought by Wandsworth Council, would be an 'alien feature in the landscape' and would remove access for informal recreation. He considered that the new sports provision would introduce



a great deal of noise and disturbance across a wider area of the common, which he called a 'tranquil green oasis in this busy part of the city'. (Ref Com/3262104, 30 November 2022)

### **A pittance of the farm budget**

Despite countless ministerial promises made during the passage of the Agriculture Bill payment for access is still not included under the environmental land management scheme (ELMS).

The government's prospectus for ELMS, published on 26 January, was pathetic. Only a pittance of the £2.4 billion farming budget will be spent on 'exploring how we can pay for actions covering permissive access' alongside 'managing existing access pressures on land and water' (ie restricting access).

We want to see ELMS paying for new and improved paths and access. Our general secretary recently met Ben Everitt, Conservative MP for Milton Keynes North, and he has kindly agreed to ask a parliamentary question about this. We shall keep up the pressure.

### **Legal fund**

We have granted £3,000 from our legal fund to the Woodcock Hill Village Green Committee at Borehamwood, Herts.

The committee's application to register the green was approved in 2008. The owner, Laing Homes, has now obtained consent for an exchange of part of the green under section 16 of the Commons Act 2006, and the committee is challenging this decision in the high court. We have made a contribution to its legal costs.

### **Agri-access in Wales**

Through Wales Environment Link we are seeking clarification that the Agriculture (Wales) Bill, currently in the Senedd, will pay for more and better access and promote opportunities to include public access, to land and water.

### **Wellow Common**

We were dismayed that planning inspector Mr W Johnson granted consent for works on Wellow Common, ten miles north-west of Newark in Notts.

The application, under section 38 of the Commons Act 2006, was for an enlarged entrance off the A616 Newark Road across Wellow Common. This was to make vehicular access to nearby properties for which planning permission had been given.

Objecting, we argued that the applicant



*Wellow Common from the A616. The track is to be extended over the common land on the right. © Google streetview.*

did not have an easement over the extra land required for the track, and therefore the grant of consent would legitimise illegal driving over the common.

The inspector failed to take account of this, stating that 'any ownership issues are a private matter between the relevant parties and not within my jurisdiction'. He was satisfied that the works would 'be in the interests of persons exercising rights of common over the land' and 'will bring wider benefits through improved highway safety'.

But if the works were not to proceed neither would the development, and highway safety would be irrelevant. The argument does not stack up. (Ref COM/3274101, 18 August 2021) □

# Path Issues

## Needed for public use

**Our Bedford local correspondent, Mike Clarke, has saved Brickhill footpath 9 from closure, following a public hearing in November.**

The 240-metre-long path runs between Waveney Avenue in the north to Falcon Avenue in the south, across Waveney Green, Brickhill, on the north side of Bedford. The green is owned by Bedford Borough Council (which proposed the path extinguishment), and is leased to Brickhill Parish Council.

## Prove

In order to close the path under section 118 of the Highways Act 1980, the borough council had to prove that it was not needed for public use. The society and a local resident objected, and so the matter was referred to the Planning Inspectorate, and inspector Claire Tregembo held a public hearing.

The southern end of the path is obstructed by 29 Falcon Avenue, which has been in place since at least 1968, and by some tree planting. When the area was developed, a public open space, Waveney Green, was provided, with a tarmac path

across it running roughly parallel with footpath 9. Part of the footpath coincides with the tarmac path.

The council argued that the path was not needed for public use because of the existence of the tarmac path more or less on the same line. Mike responded that the tarmac path had never been adopted as a public highway and therefore was not a legally-protected route. Footpath 9 provides a direct path across Waveney Green. If such a route was not needed, the council would not have made the tarmac path running in the same direction.

## Agreed

The inspector agreed with us, concluding that the path across Waveney Green was needed for public use, otherwise the council would never have provided the tarmac path. Where footpath 9 overlaps with the tarmac path it is well used, so, she said, if she confirmed the order, she would effectively be extinguishing part of a path which is used by the public. Although it would physically still be available, legally it would not exist. She refused to confirm the order.

At Mike's request Bedford Council is now consulting on a short diversion around 29 Falcon Avenue—which it should have done in the first place. (*ref ROW/3280678, 20 December 2022*)

## Rejected on width

Bourton on the Water footpath HWB26 will not be diverted, thanks to our Cotswold local correspondent Gerry Stewart, who was the sole objector to the order under section 119 of the Highways Act 1980.



*The northern end of Brickhill footpath 9 on Waveney Avenue.*

The section to be diverted (179 metres) runs south-north (A-B), on the south-west side of the village of Bourton on the Water in the Cotswolds National Landscape (see plan at <https://bit.ly/3EsBZLV>). The path is obstructed by a barn at Tagmoor Bottom, and the owner had temporarily allowed walkers to use the farmyard-entrance gate on Marshmouth Lane, to cross the farmyard and join HBW26 further south.

### **Diversion**

The proposed diversion runs north-west from point A to point D on Marshmouth Lane, about 120 metres south of point B.

Gloucestershire County Council made the diversion order in 2020, in the interests of the owner of the land crossed by both the existing and proposed paths. The owner claimed that there had been burglaries and an arson attack by people using the entrance gate. Also, there was interaction with farm machinery and livestock, and the path through the paddock to the south was not fenced, resulting in dog problems. The diversion ran to the rear of the house and would be fenced.

### **Determined**

The order was determined by planning inspector Joanna Burston. She decided that the diversion was in the interest of the landowner and would not have an adverse effect on public enjoyment of the path as a whole.

However, on the strength of Gerry's objection to the insufficient width of the new path, she concluded that the diversion would be substantially less convenient to the public. The council said that the proposed diversion (which had already been created) would vary between two and three metres, however the northern part of the route runs between a fence and a hedge and is only about one metre wide. The inspector found this stretch to be 'unwelcoming and intimidating ... [T]he limited width would not provide sufficient room for



*The part of the diversion route which is too narrow, only about one metre wide between the fence and hedge.*

users to pass each other in relative comfort.... [T]he "tunnel-like" character of the section may dissuade users from leaving the metalled road at D'.

As the convenience test was not met, the inspector refused to confirm the order. (ref ROW/3281770, 25 January 2023)

### **Pavements for pedestrians**

With Living Streets and the Ramblers, we hope to persuade the house of lords to adopt our amendments to the Levelling Up and Regeneration Bill (LURB) to keep pavements free for the public.

During the pandemic, the Business and Planning Act 2020 was introduced temporarily to streamline the procedure for allowing eating, drinking, and serving of food outdoors on public pavements and pedestrianised roads, so as to benefit businesses and customers. The government proposes to make these changes permanent in the LURB.

These proposals have consequences, which include the following—

They allow the licensed area to take up part of the pavement but not of the carriageway, thus protecting the vehicular space while reducing pedestrian space.

There is little to stop a local authority from granting a licence application. We say that refusal should be an option if the



*The Assembly Rooms in Epsom, Surrey, has taken a chunk out of the highway with no recompense to the public.*

proposals would (a) interfere with pedestrian flow, (b) leave the pavement so narrow that pedestrians are forced into the road to pass each other, or (c) cause significant additional risk to vulnerable users of the pavement.

The proposals allow a restaurant proprietor to privatise space for profit, while the highway authority remains responsible for its maintenance. The licensee should contribute to the maintenance costs and, we suggest, share the profits with the local authority.

They provide that the public-consultation

period on an application is only 14 days from the date the application is made, and takes no account of local authority delays in publicising it.

They also provide that the local authority has only 14 days to determine an application after the close of the consultation period, giving such licences unwarranted priority. Why should an applicant for a definitive map modification order have to wait perhaps 20 years, but an applicant for a pavement licence only 28 days?

A local authority would be able to grant a licence for a privately-owned and maintained public street—without any consultation with the street owner.

### Amendments

We assisted with amendments considered by the public bill committee in the commons on 18 October 2022, but they were swatted away by the parliamentary under-secretary Dehenna Davison with inadequate explanation.

We have provided amendments to the lords to address all these consequences, and hope that they will be accepted.

## Come to our AGM on Thursday 6 July 2022

**at Friends House, 173 Euston Road, London NW1 2BJ**

We hope to see you at our AGM on 6 July. As last year, there will be the opportunity to join us online if you prefer. Details will be given in the next *Open Space*.

If you would like to submit a motion to the AGM, it must reach us, bearing your signature, by midnight on Wednesday 24 May.

If you wish to stand for election as a trustee, we need your nomination, proposed and seconded in writing by members of the society and bearing your written consent, by midnight on Wednesday 24 May. Candidates must have been individual members of the society since 24 May 2022. The trustees normally hold one-hour meetings every month by video conference, with occasional meetings in person.

Please contact our office manager, Sarah Hacking (office1@oss.org.uk) if you have any queries.





**Hardwicke Drummond Rawnsley, An Extraordinary Life 1851-1920** by Michael Allen and Rosalind Rawnsley (New Beaver Press £20, softback xxxvii + 436 pages).

Rawnsley is famous as a founder (with Octavia Hill and Robert Hunter) of the National Trust and as the pre-eminent defender of the beauties of the Lake District, but as this book fully demonstrates—not always coherently—he was much else. He was a priest of the Church of England and since he was a keen promoter of Sunday schools and Sunday observance, a freemason, and a crusader against drink (though serving alcohol at home), he was presumably an evangelical rather than a catholic.

## Prone

The authors say Rawnsley was 'prone ... to depression and self-doubt'. This judgement does not fit the continuous whirlwind of publicity-seeking and organisational frenzy in which he lived, and which can have left little room for moods. After Uppingham and Balliol, where he was one of Ruskin's Hinksey road-diggers, he served a very active curacy in the Bristol slums, thereafter morphing into national stature as Canon Rawnsley. The Carlisle diocese exceptionally allowed him three curates of his own at Crosthwaite, the Keswick suburb where he was the incumbent for 34 years.

In defending the Lakes—in the name of God-given beauty—against railways, path closures, housing and industrial developments, brash advertisements, road widenings, motor cars, and anything else that roused him, he was a supreme

polemicist. His preferred weapon was a letter to the editor, not only *The Times*, but regional and local papers too. His fund-raising and organisational skills were formidable and, as his work with the Keswick and District Footpath Preservation Association showed, he was a fierce negotiator though capable of compromise, sometimes to the dismay of colleagues. He served as an 'Independent Liberal' on Cumberland County Council for six years, but lost his seat apparently in the cause of temperance to a local landowner.



*St Peter and St Paul's church and vicarage, Shiplake, Oxfordshire (in 1813), Rawnsley's birthplace. Rawnsley Archive.*

Rawnsley cannot have suffered self-doubt, for he clearly believed that he should take up arms in any cause he fancied, scattering his banal sonnets and doggerel hymns as he did so. The authors point out that he could not resist hinting that it was his idea that had inspired others to found the National Trust 'and in the end, he probably did genuinely come to believe this to be true'. At any rate he worked tirelessly for it.

He was also a keen educationist, including

co-education, and a promoter of local history, music festivals, bell-ringing, and traditional bread and crafts. Though a member of the Church of England Society for the Promotion of Kindness to Animals he went fox-hunting with exhilaration. A worse hypocrisy was his failed string-pulling to get his son Noel out of front-line soldiering in 1915, though he was himself a noisy recruiting sergeant for the war.

This book is sometimes as confusing as the life of its subject though just as intensely interesting. There are also editorial failures: Rawnsley's battles in the Lakes need maps, eg to locate railways which, thanks to him, were never built.

**Chris Hall**

**Common Land in Britain; a history from the middle ages to the present day** by Angus J L Winchester (The Boydell Press, hardback £60, 330 pages).

Until now, most articles and books written about the history of common land have focused on discrete themes such as enclosure or the value of the commons' resources to the poor. As welcome as those are, this book by Angus Winchester, emeritus Professor of local and landscape history at Lancaster University, does something very different. It gives us a chronological history of common land. Winchester captures what we know of the origins of this much misunderstood but cherished category of land and then proceeds to chart people's interaction with it over several centuries.

### **Intricacies**

The book is in two parts. The first explores major themes associated with the land in general, and the second follows the history of eight commons. In his introductory chapter Winchester tackles the intricacies of definition, and in chapter one he explores common land in today's landscape. No history of common land would be complete without setting out the law relating to the land, and

Winchester does this admirably in his second chapter where he includes arrangements in Wales and Scotland.

The third chapter explains how common land and its resources were managed through the manor courts, and the fourth explores the many uses made of the land beyond grazing and collection of natural resources. Chapter five continues on this theme, investigating the relationship between the poor and common land.

### **Watershed**

Enclosure is the subject of chapter six. In chapter seven, Winchester brings us to and beyond the watershed of the 1860s when conservation became pre-eminent and the Commons Preservation Society (now the Open Spaces Society) began its work. The final chapter in part one brings us to modern times, exploring the legislative changes and the many changing uses made of the land in rural and urban settings.

Part two recounts the history of eight commons in different parts of England, Scotland and Wales. With many surviving commons to choose from Winchester succeeds in providing the reader with contrasting landscapes and histories. His case studies demonstrate that while there is much to connect different commons, each has its unique story shaped by the landscape and the people who inhabited it.

### **Unique**

Winchester draws on his own expertise and the work of others to document a rich history. The book is beautifully illustrated with maps, photographs, and archival sources.

For anyone wanting to research the history of a local common, the book will be of particular value in placing such research in wider context. Winchester reminds us that common land has always and will continue to mean different things to different people.

**Frances Kerner**

## **Michèle Kohler, 1945-2022**

**Michèle Kohler, who has died aged 76, was a generous supporter of ours.**

Michèle was born in California in 1945. The family moved to New York after the war where her parents were both family doctors. She read history at the University of Rochester, New York, when she was only 15.



*Chris and Michèle.*

In 1972, after she had finished her PhD in eighteenth-century Scottish history, she looked for a job in academia. She responded to an advertisement in *The Times Literary Supplement* for a specialist in eighteenth-century history to write an introduction for a catalogue of antiquarian books. Although she did not get the job, she married Chris Kohler, the cataloguer, and became a bookseller, cataloguing thousands of old books.

They lived at Westhumble near Dorking, and Michèle loved to walk on the nearby North Downs Way. She soon became involved with local footpath diversions, and they joined the Open Spaces Society. Michèle appreciated our vigorous approach to protecting common land and public paths. She was an early-music impresario, staging memorable concerts under the rubric 'Cornflower presents' in local parish churches.

Michèle's funeral reception was at the Burford Bridge hotel underneath Box Hill, the location of their wedding

reception 20 years earlier. Her friends made donations to the society, her favourite charity, in her memory, raising nearly £1,000.

## **Julie Boston, 1934-2022**

**Julie Boston, who has died aged 88, was a tireless campaigner. She encouraged others to join her by making her activities fun.**

She was our Bristol local correspondent from 1998 to 2000 and often represented us subsequently.

Julie grew up at Edenbridge in Kent and went to Exeter University in the early 1950s. Here she was active in student protests. She then progressed to socialist politics to which she stayed true throughout her life. She married Will Fancy, and qualified as a teacher. They had two children while living in London and moved to Bristol in the late 1980s.

One of Julie's most high-profile campaigns was saving the popular Severn Beach railway line through Bristol from closure. She campaigned for public toilets, libraries, and workers' rights, and against poll tax and inequality. She was a Greenham woman and joined countless marches, espousing her cause through poetry, song, and games. **KA**



*Julie on Clifton and Durdham Downs, Bristol, in July 2021 at the celebration of Downs for People's victory in the campaign against zoo parking there. Julie played an active part.*

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

Tel: 01491 573535

Email: [hq@oss.org.uk](mailto:hq@oss.org.uk)

Web: [www.oss.org.uk](http://www.oss.org.uk)

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