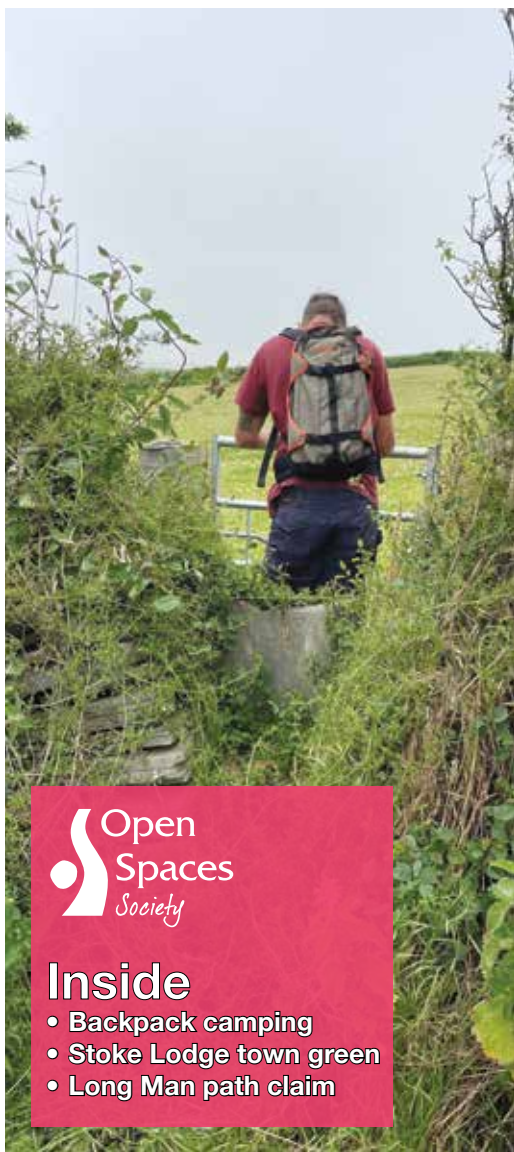


# Open Space

Autumn 2023

Vol 33 No 8



 Open  
Spaces  
*Society*

## Inside

- Backpack camping
- Stoke Lodge town green
- Long Man path claim

Campaigning since  
**1865**

# Open Space

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## Cover story

Before and after. St Ervan footpath 16 in Cornwall was obstructed by unauthorised gates. Our local correspondent Lucy Wilson served notices on Cornwall Council under section 130A of the Highways Act 1980. We were ready to go to court, but the gates were removed at the last minute (*see pages 12-13*). Photos: Lucy Wilson and Pete Greening.



## Toughening up

**In September I spoke to the Gower Society, as part of its 75th anniversary celebrations. The society played an important role in securing Gower as the first area of outstanding natural beauty (AONB) in 1956. And on its inception in 1948 it had joined the oss. We still share our aims.**

Those were heady days when the post-war government appreciated our environment, and got things done. The National Parks and Access to the Countryside Act 1949 (‘the People’s Charter’), whose 75<sup>th</sup> anniversary we celebrate next year, was ground-breaking, giving us national parks, AONBs, definitive maps of rights of way, and much more. Good things flowed in a time of austerity.

### Amendment

We have austerity today, but there aren’t too many of the good things. True, the Westminster government has at last conceded a long-overdue amendment in the Levelling Up and Regeneration Bill by placing a duty on public bodies to further national park purposes (thanks to tireless lobbying by the Campaign for National Parks). This replaces the useless requirement merely to ‘have regard to’ park purposes.

It is encouraging too that government has lost votes on the bill in the house of lords; for instance its attack on democracy and public involvement in planning has been reversed. But overall, the outlook is bleak—and time for us to toughen up.

Public paths and open spaces suffer when

local authorities are starved of resources. We shall hit them with legal notices to force action, taking them to court if necessary, to show that they must prioritise spending on paths and access, which are so crucial to people’s health and well-being.

### Sparked

The society believes in legal action. Our intervention in the Dartmoor backpack-camping case was effective (*see page 3*), although the matter may yet go to the supreme court. It sparked a wider debate about freedom to roam which means that we must be ready for a change of government.

We need more access close to home, to help those without the means, confidence, or ability to reach the natural environment. Legal access to woodlands and watersides, and on water would be admirable. Developers must be mandated to register spaces as town and village greens, to guarantee local people’s rights there and protect them for ever.

Public paths, the most important means of gaining access to the outdoors, must be properly recorded, protected, and maintained. A new government must repeal the cut-off for historic-path claims; use agricultural money for new access; and provide enough funds to get our rights of way fully open and usable—among much else. This is vital for levelling-up—and a fitting way to celebrate the 75<sup>th</sup> anniversary of the People’s Charter. **KJA**

# Saving Blackwell parkland

Members of the society in Darlington are campaigning to save the historic Blackwell parkland from development.

**A campaign is on to register Darlington's 18-hectare historic parkland as a town green. Our members Michael and Angela Green of the Parkland Heritage Network tell the story.**

The historic Blackwell parkland, on the south side of Darlington, is the last of the town's Georgian pleasure parks, dating back to the 1700s. It first appeared as a parkland on Greenwood's map of 1820.

The park has many historic assets and is rich in wildlife. There is also striking evidence of farming in mediaeval times. It is a valuable amenity space, with over 600 trees and an ancient pond.

With the listed Blackwell Grange, the park is owned by Darlington Borough Council, having been purchased in the 1950s by Darlington Corporation.

In 2018 the adjacent meadows (five hectares) were sold to developers, and important habitats were destroyed. The

next plans were for housing on the parkland.

We helped to form the Parkland Heritage Network which joined the Open Spaces Society. As a result of our intervention, the parkland has gained three designations in the local plan: urban parkland within Greenwood's 1820 boundary, green wedge, and local wildlife site (covering half of it).

## Not enough

That's a good start, but not enough to save the park for ever. So, we are pressing the council to register the site as a town green, for future generations, with a restoration plan.

We spoke to candidates from four parties (Conservative, Green, Labour, and Liberal Democrats) before the May 2023 local election, and all favoured protecting the park by registering it as a green. This is promising.

See [rb.gy/rchoa](https://rb.gy/rchoa) for the group's video.



*Aerial view (looking north) of part of the historic Blackwell parkland, with the approximate boundary marked. Photo: Dronecam Solutions Darlington.*



## The right to camp

*Alexander and Diana Darwell (respondents) and Dartmoor National Park Authority (appellant) and Open Spaces Society (intervener) [2023] EWCA Civ 927.*

The court of appeal judges, Sir Geoffrey Vos (Master of the Rolls), Lord Justice Underhill, and Lord Justice Newey, overturned judgment in the high court. They ruled that the definition of ‘open-air recreation’ in section 10 of the Dartmoor Commons Act 1985 (the 1985 act) does include backpack (wild) camping on the Dartmoor commons (comprising about one third of the Dartmoor National Park), and that such camping is therefore included within the right of access on foot and horseback.

### Issue

The point at issue was section 10(1) of the 1985 act which says:

Subject to the provisions of this Act and compliance with all rules, regulations or by-laws relating to the commons and for the time being in force, the public shall have a right of access to the commons on foot and on horseback for the purpose of open-air recreation; ...

As explained in spring *Open Space* (page 3), landowners Alexander and Diana Darwall had bought Stall Moor common on south-west Dartmoor and were arguing that backpack camping was not permitted by the 1985 act. Sir Julian Flaux, Chancellor of the High Court, had decided that ‘on its true construction, section 10(1) of the 1985 act does not confer on the public any right to pitch tents or otherwise make

camp overnight on Dartmoor Commons. Any such camping requires the consent of the landowner.’ [96]

The Dartmoor National Park Authority (DNPA) obtained leave to appeal, and the Open Spaces Society was permitted to intervene. The case was heard in the court of appeal on 18 July 2023, and the judgment was issued on 31 July 2023 in favour of the appellants. The Darwalls were represented by Timothy Morshead KC, the DNPA by Timothy Straker KC, and the OSS by Richard Honey KC and Ned Westaway both acting *pro bono*.

### Discussion

In the lead judgment, the Master of the Rolls reviewed some of the predecessor legislation concerning public access to land, of which parliament would have been aware when it passed the 1985 act. This included the Law of Property Act 1925 and the National Parks and Access to the Countryside Act 1949. He also considered the later Countryside and Rights of Way Act 2000 (CROW).

As demonstrated in our evidence, camping is expressly excluded in CROW and in most pre-1985 arrangements giving access to open country. This shows that it must have been included in the definition of recreation for it then to be excluded, which leads to the conclusion that it was embraced by the 1985 act.

The Master of the Rolls then turned to the words of section 10(1). ‘The meaning of “recreation” is obviously central. The *Shorter Oxford English Dictionary* says that “recreation” in the sense it is used in section 10(1) means “an activity or pastime pursued, especially habitually, for the pleasure or interest it gives”.

“Open-air” seems to me fairly clearly to refer to the outside air and to something done outside a building or structure.’ [51]

He averred that a walker who lies down for a rest without pitching a tent would be present for the purpose of open-air recreation because the resting was a necessary part of the recreation. What then if the walker goes to sleep? The argument that recreation is something one does when one is awake and sentient was too much. ‘A walker resting by sleeping is merely undertaking an essential part of the recreation of a lengthy walk.’ [55]

### Question

The next question was whether it made a difference if the walker rested on a sheet, in a sleeping-bag, under a tarpaulin, or in an open or closed tent. He considered the walker was still undertaking an essential part of recreation, and it did not matter whether he had walked far or not. The point was that the person must have travelled there on foot or on horseback and must abide by the restrictions in the by-laws and in schedule 2 to the 1949 act.

The Master of the Rolls concluded that ‘on its true construction, section 10(1) of the Dartmoor Commons Act 1985 confers on members of the public the right to rest or sleep on the Dartmoor commons, whether by day or night and whether in a tent or otherwise, provided



*Camping on Dartmoor. Photo: © Andrew Bowden, Creative Commons Licence.*

that the other provisions of the 1985 act and schedule 2 to the 1949 act and the by-laws are adhered to.’ [61]

The other two judges concurred and the appeal was allowed.

### Comment

The unanimous decision of the court of appeal reverses the somewhat surprising judgment of the chancellor at first instance. It accords with logic. Every enactment prior to and since the 1985 act which has confirmed a right of access to common land or open country has also specified activities which are not within the scope of the right. The list of activities is often extensive and wide-ranging, such as in schedule 2 to the 1949 act (which was applied to the right conferred by the 1985 act). It would be astonishing if, having not included camping in such a list, it was nonetheless taken that parliament had intended to exclude it, while having made express provision to exclude, for example, fishing or lighting fires.

The judgments refer to the position under section 193 of the Law of Property Act 1925. That provision states (in paragraph (c) of the proviso to subsection (1)) that ‘such rights of access shall not include any right ... to camp or light any fire thereon’, and further provides (in subsection (4)), that it is an offence to camp. Again, it would be surprising if the provision had taken this form if those drafting it did not think that it would otherwise confer a right to camp.

### Postscript

The judgment was issued on 31 July. At the end of August the Darwalls applied for leave to appeal to the supreme court. As an intervener we were not permitted to respond, but the DNPA has submitted an objection. If leave is granted, we shall again apply to the court for permission to intervene. So, despite a unanimous judgment in our favour from the court of appeal, the matter may not yet be resolved. □

# Our third Eversley Award

The society has presented its prestigious Eversley Award to Ian Witham for his outstanding work.

**Ian Witham, of Edingthorpe, ten miles south-east of Cromer in Norfolk, is the third winner of our rarely-presented Eversley Award for Outstanding Personal Endeavour.**

The award is named after Lord Eversley (1831–1928), the society’s founder, president, and chairman. It is presented occasionally by the trustees to people who have undertaken long-term work for the protection of commons, greens, paths, and public access.

Ian has served as the society’s local correspondent in Norfolk since 1999. During that time, he has worked quietly and effectively for all the society’s interests.

He has saved paths from diversion and extinguishment, claimed many public paths, taken the council to court over a missing footbridge, rescued commons from encroachment, and won a new village green. He assists members in the county and, despite having paid employ-



*Lyng footpath 3, near Reepham in Norfolk. In 2015 Ian saved this path, which runs straight past the telegraph pole and through the garden, from being diverted around the field edge to the left.*

ment, devotes much of his spare time to the society’s endeavours. He has no car and relies on the limited public transport available in a Norfolk village.



*Restricted byway at Mundesley, recorded on the definitive map in 2021 thanks to a claim from Ian.*

Says Phil Wadey, our chairman: ‘Ian has had to stand up to a recalcitrant county council, in a predominantly rural area dominated by landowning interests and large estates. He always acts in a principled and pragmatic manner; he is not afraid to be a lone voice. He does not allow the criticism of others to deter him, and he courageously champions our cause in the face of opposition, but in a way which does not cause aggravation. Those who enjoy public access in Norfolk have Ian to thank for making it a better experience. He is truly deserving of the Eversley Award.’

Responds Ian: ‘It has been an honour to work for the society here in the county that is so important to me. I should like to thank everybody who has made that possible, over the years. I hope to “keep a troshin”, as we say in Norfolk, as the need for the society’s work in the county is as great as ever.’ □

# Taking action



## Square holders

**Emily Heath of the Friends of Freeman's Wood explains how the group has saved 11 hectares of green space on Lancaster's western edge.**

A former factory tip, Freeman's Wood is next to an industrial estate and a densely populated residential area. Now it is a peaceful haven for walkers and wildlife, with mixed woodland, scrub, and grassland.

We won a long battle to save the land from development and get most of it registered as a town green in 2020 (OS spring 2020 page 8). In 2022 the developer agreed to sell us the land (via North Lancashire Community Land Trust) for £63,000 (including both sides' legal costs). We held a public meeting to discuss it and there was clearly a lot of support and excitement from the local community.

We raised £60,000 in just two months, by inviting people to sponsor three-metre squares of land, each identified by a unique combination of three words on the What3Words website or app. There are



*Children and staff from the Marsh Community Centre estate in Lancaster visit Freeman's Wood. Photo: Emily Heath.*

approximately 12,000 squares within the 11 hectares, so we invited people to sponsor them at £5 each. Nearly 800 people became 'square-holders', with donations ranging from £5 to £5,000.

Following consultations with local people on how the land should be managed, we hope to remove at least some of the metal fence, create some fully-accessible entrances and paths, add welcoming signage, and increase the biodiversity of the woods and meadow.

## We won on the playing fields

The registration of Stoke Lodge playing fields, on the north side of Bristol, as a town green has been a roller-coaster ride. So writes Helen Powell of We Love Stoke Lodge, our member to which we gave assistance.

Stoke Lodge, a nine-hectare parkland estate, has been enjoyed for lawful sports and pastimes by the community since it was purchased by Bristol City Council in 1947. It is used by Cotham School, some three miles away, as detached playing fields under a 125-year lease which provides that the school's use is subject to 'all existing rights and use by the community'.

The journey to registration began with an application by local resident David Mayer in March 2011, with evidence of 20 years' use by local people. Bristol City Council held a public inquiry in 2016 and the inspector (barrister Philip Petchey) recommended the council to reject the application. This was largely due to two Avon County Council signs which, he considered, rendered use contentious at least until April 1996 when Bristol City Council replaced Avon.





*Protest at the fencing around the green in 2019. Photo: We Love Stoke Lodge.*

Bristol's public rights of way and greens committee disagreed with the inspector and decided to register the green. After a judicial review, initiated by Cotham School, that decision was overturned on procedural grounds in 2018.

New applications were made, showing use during the 20-year period from 1998. But Mr Petchey refused to reconsider his previous decision on the sufficiency of the Avon signs, nor did he hold another inquiry. So the matter was referred again to the council's committee.

### Recommended

The scene was set for a tense council meeting on 28 June 2023 at which officers recommended rejection of the application. We argued that there were 14 entrances plus many residential back-gates onto the field, and that two signs, erected by a defunct authority, were not enough to make use contentious. The councillors concurred, and they also agreed that the 2016 public inquiry was not well publicised, so that thousands of people who enjoy the site were not aware that their use was being challenged.

The Committee voted 6:1 for registration; a fence (*pictured above*) erected by Cotham School in 2019 remains and now must come down.

We are proud of our community for coming together to protect Stoke Lodge,

giving their time, money, and skills.

The group's video can be seen at <https://rb.gy/vi4uc>.

### Camber group battles on

The Camber Action Group, a member of the society, has been fighting to save a 400-metre path around Camber Dock in Old Portsmouth since November 2014 when, following the route's obstruction, residents applied for it to be recorded on the definitive map (OS summer 2018 page 14).

The council refused to make the definitive map modification order (DMMO), and the applicants appealed to the environment secretary who directed the council to make a DMMO for a restricted byway in 2018. After repeated delays the order was published in 2022. It has now been submitted to the secretary of state for confirmation. The council's opposition means that the applicants, Ken Bailey and Anna Koor, face a public inquiry in November.

Support for this community campaign grew significantly when a crowdfunder was launched in June. This raised £4,000 to help with costs incurred by the applicants, and has enabled them to engage a rights-of-way barrister to review their statement of case in preparation for the inquiry. □



*Looking south from Spinnaker Tower, Portsmouth Harbour, to Camber Dock. The claimed route is marked in red.*



## Missing piece restored

Hertfordshire County Council, the commons registration authority, has granted our application to register as common land just under four hectares adjoining the northern boundary of Hudnall Common, Hertfordshire. The land, which is one mile east of Little Gaddesden, comprises trees, ferns, and



*The newly-registered land, looking east.  
Photo: Frances Kerner.*

bushy undergrowth. It was formerly part of the common but was severed from it when parts of the Ashridge estate were sold in the 1920s.

In 1967, all of Hudnall Common was provisionally registered as common land but, following an objection, part of the land was excluded. The remaining and principal part of the common (just under 47 hectares) had been bought by the society with funds raised in the 1930s and transferred to the ownership of the National Trust in 1937. Only the Trust land was finally registered as common.

However, the Commons Act 2006 gave the opportunity to our commons re-

registration officer, Frances Kerner, to apply for this lost common. We provided evidence that the excluded land is waste land of a manor, which means that it can be registered as common land.

Having helped to save Hudnall Common more than 80 years ago we are delighted to have reclaimed the excluded land.

## Moelfre muddle

An application was made to Powys County Council by Mrs J Wilkins, under paragraph 7 of schedule 2 to the Commons Act 2006, for deregistration of land at Rhiwgriafol on Moelfre Common (register unit MCL76), ten kilometres west of Oswestry.

The application had to show that the land was not, among other things, common land nor waste of the manor at the date of provisional registration under the Commons Registration Act 1965. In response to our complaint that the evidence provided was inadequate, further evidence was supplied.

A paper was put to the council's relevant committee in August 2018, whereupon



*The land is to the right of the stream in the cwm, above the forestry. Photo: © John Lucas, Creative Commons Licence.*

we submitted that the report had made serious errors of law in recommending whether the land was, at the date of provisional registration, waste of the manor. The paper was withdrawn.

Five years later we were again informed that the matter was going to committee. The council had taken counsel's advice. The report contained similar flaws to the previous version, this time apparently

## AGM 2024

Next year's AGM will be held on Thursday 4 July at Friends House, Euston Road, London, probably with an online option. Note the date now.

backed by the external legal advice. We wrote, identifying the errors—for instance, the council appeared to think that, because the land had ceased to be held by the lord of the manor, it could no longer be waste of the manor: an interpretation found to be incorrect by the House of Lords in *Hampshire County Council v Milburn* as long ago as 1990.

All to no avail. Our submission was not put to the committee which agreed the recommendation to grant the application.

If we had seriously doubted that the land was mistakenly registered we might have contemplated legal action. But it is the right decision reached through the wrong analysis, so we shall let it go.

## Our AGM

We held our AGM on 6 July at Friends House, Euston Road, London, with 41 members attending, in person or online.

The chairman, Phil Wadey, stated that 60 votes had been cast and all motions were carried. In his keynote address he urged members to record public rights of way for the definitive map before the government's guillotine took effect.

The general secretary, Kate Ashbrook, reported that, in the last year we had taken up more than 1,000 cases on behalf

of members, an extraordinary achievement for a small organisation. The treasurer, Stuart Bain, emphasised the importance of legacies to us—our former vice-president, Ronald Smith, had left us £782,438 in the last year which made a significant difference to our sustainability.



Diane Andrewes (pictured above) was elected as a new vice-president (see below), and Tara-Jane Sutcliffe was re-elected as a trustee.

The chairman announced the winner of our Eversley Award, Ian Witham (see page 5). After the formal AGM business members gave brief talks about their campaigns.

## Doughty Diane

Our new vice-president, activist Diane Andrewes, has lived in Bursledon in Hampshire since 1964. She has been a member of the society for more than 30 years and was a trustee three times between 1993 and 2008.

Diane is a founder member of the Bursledon Rights of Way and Amenities Preservation Group, which has championed Bursledon's paths and open spaces since 1990, and she has filled many roles there. She was a member and footpath representative of Bursledon

Parish Council, for many years, and an Eastleigh Borough Councillor. She persuaded the councils to dedicate a number of new footpaths in the parish.

A veteran campaigner, in 2008 Diane gathered evidence and claimed two footpaths leading to the Jolly Sailor pub in Bursledon. She battled to save the parish pond from enclosure, and has fought numerous planning applications which would have degraded the village.

## Chaos at Kenfig

Inspector Janine Townsley has allowed an application for five kilometres of fencing, made by Natural Resources Wales (NRW) under section 38 of the Commons Act 2006, on Kenfig Burrows and Pool Common in Bridgend. The society objected. NRW wanted permanent fencing, but the inspector has restricted this to 15 years.

We said that account should be taken of the prolific existing fencing on the common, which will be retained. The inspector rejected this, saying that although the fencing may have been erected without the necessary consents, this was 'not a matter which can be taken into account in the determination of this application'. This contravenes the spirit of the provision in section 39(4) of the Commons Act 2006 requiring the inspector to consider any other fencing which had consent.



*Kenfig Common. Photo: Joseph Bain.*

The inspector did not address our point that the gates will be installed on the used, not the definitive, paths. So it appears that Welsh ministers condone the obstruction of definitive routes. We have complained to the Planning Inspectorate. (CAS-01479-L7MOC3, 4 August 2023)

## Sparks fly at Chailey

UK Power Networks (UKPN) has been refused permission for two electricity substations on conspicuous sites on the Chailey Commons in East Sussex.

It claimed that these were needed to upgrade the supply, and to discontinue an existing supply line where permission



*CCS campaigners celebrate on the common. Photo: CCS.*

had been withdrawn. Both substations would have been close to the roads and prominent in the landscape.

Inspector Mark Yates held a hearing into the applications on 6 June 2023. The society, with the Chailey Commons Society (CCS), appeared as objectors. We said that the substations would be intrusive and ugly, and that UKPN had not tried hard enough to find more suitable sites. The CCS presented expert opinion that the substations would have a harmful effect on biodiversity.

The inspector, in his decision letter, referred to the lack of any significant benefits for the public arising from the proposed works, the potential alternative options, and the adverse impact on the



*Local correspondents, trustees, and staff, on Bilberry Hill in the Lickey Hills.*

landscape and nature conservation.

Consent was refused. (COM/3299537 and 3298979, 2 August 2023)

### Local correspondents meet

About half our local correspondents, with trustees and staff, met for two days in August, at Hillscourt on the edge of the Lickey Hills near Bromsgrove in Worcestershire. It was a chance to catch up with changes in law and policy, and to talk to colleagues, both indoors and on a walk (pictured above).

### Lizard Green is a common

Debra Kaatz applied, under the Commons Act 2006 schedule 2 paragraph 5, to transfer part of Lizard Green in Cornwall from the register of common land to that of town and village greens. We supported the application but raised some queries.

The applicant was able to provide only limited evidence in support of the application, including use of the land for fairs and fêtes, but as the inspector, Helen O'Connor, noted, little of this was corroborated in documentary sources, and this was compatible with the land being common land.

The application had to show that, before provisional registration as a common in 1968, the land was a green. Such an application is most likely to succeed where there is evidence of a statutory

allotment as recreation ground, but that was not the case here. The application was referred to the Planning Inspectorate.

It was opposed by Landewednack Parish Council and 16 others, with only one person in support. Views were coloured by the green's use for summer-festival parking, a practice which has attracted controversy since the 1920s, but which brings substantial revenues to the council. It probably was believed that if the application were granted, parking might become illegal—although that is not entirely clear following the judgment of the supreme court in the *TW Logistics* case (OS summer 2021 page 5).

The applicant had applied only in respect of part of the green, apparently as a concession to conflicting uses, but the inspector considered that this undermined her case as it was unlikely that only part of the green could satisfy the statutory test. The application was refused (COM/3287816, 24 May 2023) □



*The Lizard Green. Photo: Anne Burgess.*

# Path Issues

## Long path at Long Man

**We are celebrating the addition of a 2.3-kilometre restricted byway to the official map of public paths in East Sussex. The route was claimed on historical evidence by our local correspondent for Lewes, Chris Smith.**

The path runs from Robin Post Lane in the north (TQ568068, to the west of the A27 between Hailsham and Polegate), south to cross a bridleway which is part of Sustrans national cycle route 2, then to Hide Cottage before descending to the A27 (TQ561047). From there it is possible to access the new cycle route from Lewes to Polegate.

Chris did copious research to prove that the route was a public highway, and East Sussex County Council (ESCC), the surveying authority, did more. The council made an order for the path, but the landowner objected and so the matter was referred to an inspector to determine after exchanges of written representations.

On 9 August, inspector Gareth W Thomas



*Wootton Bridge, at the southern end of the claimed route. Photo: Chris Smith.*

ruled that the path was a public highway and should be added to the definitive map as a restricted byway.

He commended the evidence submitted by the applicant and the objectors as 'very comprehensive'. He reviewed this evidence, and considered that the records relating to the railway, which is crossed by the path at its southern end, were decisive.

## Parish road

The Railway Acts allowed for compulsory purchase of land to build railways, and although they were not produced to record public rights of way, the plans needed to be accurate. The railway plans for this site, of 1839 and 1843, stated that part of the claimed route is a parish road, and subsequent documents confirmed that. There was a dispute about the precise alignment, but the inspector agreed with Chris that the route he now claimed was shown on the 1877 highway-diversion plan.

This route runs through an area with no public rights of way, and so will be a useful addition to the network, linking footpaths and bridleways around Abbots Wood with those on the South Downs.

The way is not open and usable yet because the northern section has become overgrown, but once ESCC has carried out the necessary work, it will be an asset to walkers, horse-riders, cyclists, and carriage drivers. (ROW/3293515, 9 August 2023)

## We free Cornish path

By threat of legal action, we have achieved the removal of several illegal obstructions on a public footpath at St Ervan, three miles south-west of Padstow.

Lucy Wilson, our local correspondent for North Cornwall, threatened to go to court for the removal of two unlawful gates on St Ervan footpath 16, south of Treglinnick Farm. At the last minute, the gates were taken out, and the path can now be walked easily (*see cover story*).

This footpath had been blocked for many years. In October 2021 the Ramblers persuaded Cornwall Council to remove obstructions. Last year Lucy threatened legal action against unlawful crop-obstructions, which were eventually cleared (OS autumn 2022 page 7).

### Public expense

However, several gates had been installed by Cornwall Council and the landowner or occupier at public expense, without the necessary consent under section 147 of the Highways Act 1980. These were therefore illegal obstructions. They included pedestrian gates either side of an existing stone-stile in a hedge-bank, creating an obstacle course for path users. Walkers had to negotiate three structures within a few metres, where one structure would have sufficed.

On 16 March 2023, acting for the society, Lucy served notices on the council under section 130A of the Highways Act 1980. These required the authority to respond within one month, explaining what action it would take. If the matter was not

resolved, Lucy could apply to the magistrates' court for an order requiring the council to act.

The council replied that it would serve notice on the landowner to remove all structures within a month.

On 16 June the gates remained, so Lucy served notice on Cornwall Council that she intended to apply to the magistrates' court. Shortly after, the gates either side of the stile had been removed, as had a similar arrangement at a second stile on the same path.

We hope that Cornwall Council has learnt a lesson and will be more responsive in future.

### More in Oxfordshire

Meanwhile, in April our general secretary served four notices on Oxfordshire County Council, under section 130A of the Highways Act 1980. The obstructions, which she had first reported more than three years ago, were two padlocked gates, and two structures, which might once have been stiles, one of them on a public bridleway.

As a result the council took action before the deadline: the gates were unlocked, one stile was replaced with a better structure, and the other with a bridlegate. Consequently, a substantial network of paths in the parish has been reopened.



*Left: illegal 'stile' on bridleway 28 at Tetsworth. Right: new bridlegate.*

The society is ready to take legal action where other methods fail to get paths reopened. We have appointed Jess Tyler as our case officer (enforcement) to lead on this work (*see inside back cover*).

### Path-change guidance

On 1 August 2023 the Westminster government announced its 'Guidance on diversion or extinguishment of public rights of way that pass through private dwellings, their curtilages and gardens, farmyards and industrial or commercial premises'. It applies in England only, and has not been published, merely sent to local authorities.

The guidance advises highway authorities that, in considering applications for path diversions and extinguishments, they should balance the privacy and security interests of the landowner against the interests of the public. The legal tests in sections 118 and 119 of the Highways Act 1980 continue to apply, so this should not change anything. The risk is that highway authorities pursue more path changes in the landowner's interest, instead of focusing on their vital statutory duties.

### Bedford abuse

However, Bedford Borough Council is already misusing this guidance which it has prayed in aid on three diversion orders (which our local correspondent, Mike Clarke, is opposing).

One is a rationalisation scheme at Ravensden, mostly out in the fields. Another is the cross-field to headland diversion of Oakley bridleway 7 and Clapham bridleway 27, far from any property. The third is the diversion of Bedford footpath 1 across the grounds of Goldington Academy where it is obstructed by a building. The guidance does not apply to schools, for which there is separate legislation (Highways Act 1980 section 119B). In none of these cases is the guidance relevant.

We need to watch out for such abuse.

### Meeting with NTCT

We had a list of concerns to raise with the National Transport Casework Team (NTCT) which carries out casework for the Secretary of State for Transport—but it refused to meet us. We referred this to the Henley MP, John Howell, and after nearly a year of correspondence NTCT conceded. We met in June, jointly with the British Horse Society and Ramblers.

Among our concerns were temporary traffic regulation orders (TTROS), which



*Footbridge in south-west Herefordshire, closed since August 2020 by a TTRO because the council has failed to mend it. Photo: David Howerski.*

must be renewed every six months by the secretary of state. This is often a rubber-stamping exercise. Too many authorities make TTROS to avoid maintaining the network (Herefordshire is one such authority, see OS summer 2023 page 13).

### Safety

The team receives about 600 applications for TTRO renewals each year, and its main concern is public safety. We replied that often the alternative route is unsafe.

NTCT said it had no power to require the authority to act, but it could warn that no further extensions would be permitted. If we are aware of an excessive number of TTROS in an authority area, we should inform NTCT. It also said that it would welcome representations from third parties on the desirability of directing an extension: this is progress. We shall produce guidance for our volunteers. □





**The Wealdway, from the Thames to the English Channel** by Robert Peel (published by Kent and Sussex Ramblers, <https://rb.gy/1czs>; £8, but quote 'Open Space' before 31 January 2024 for special price of £6.50 including postage).

The Wealdway runs for 132 kilometres between Gravesend on the Thames estuary in north-west Kent and Eastbourne on the East Sussex coast. Devised by Kent and Sussex Ramblers, it was opened in 1981.

It is, sadly, one of the lesser-known long-distance walks. This excellent guide makes one wonder why.

## Variety

As the book's diagrams clearly illustrate, cutting across south-east England the path traverses many different landscapes—the North Downs, a greensand ridge, the Medway valley, the low and high wealds, the Cuckmere valley, and finally the South Downs. Between them these comprise a great variety of scenery and history.

The route itself is largely rural, the only town between the two termini being Tonbridge in Kent. The guide describes the way as a series of one-day walks with public transport options at each end, some better than others. There

is also a Tonbridge town trail.

The maps and instructions are clear and there are plentiful points at which to stop and stare.

My first encounter with the Wealdway was 40 years ago when the Ministry of Defence bought the Bowling Alley, a splendid dry valley at Luddesdown in Kent, for mine laying and infantry training. I took part in the public inquiry,



*Eastbourne promenade, the southern terminus. Photo: Robert Peel.*

with many others, and was overjoyed when the scheme was rejected. The book mentions this and other path and countryside battles.

This is well up to the standard of Kent Ramblers' other three walk guides. **KA**



*The Bowling Alley, saved from the military. Photo: Robert Peel.*

**Highway Law 6th Edition** by Stephen Sauvain KC, Ruth Stockley, and Ned Westaway (Sweet & Maxwell, £256, hardback 823 pages).

This sixth edition of *Highway Law* is co-authored by Stephen Sauvain KC (who is also the author of the five previous editions), Ruth Stockley, and Ned Westaway, all of whom have practised extensively in highway law.

This new edition is a welcome update. It is almost nine years since the previous edition was published. This is the longest gap between editions since the first in 1988, and during that period there has been a stream of new case-law. There have also been many legislative changes affecting highway law.

### Specialised

This is a specialised reference book, its content focused on the complexities of the law of England and Wales. Anyone involved with public rights of way (footpaths, bridleways, and byways) will no doubt be familiar with *Rights of Way: A Guide to Law and Practice* (the 'blue book') and may look to make comparisons (and wonder if the price of £256 for *Highway Law* is worth the outlay compared to £29.95 for the blue book).

*Highway Law* is not a substitute for the blue book, and it does not try to be. What it may lack in more nuanced detail, background, and practical guidance specific to public rights of way, it more than makes up for with relevant case-law developments, up-to-date legislation, and comprehensive coverage of and insights into the legal principles and regulations governing highway law in general. It also provides a full picture of where public rights of way fit into the greater scheme of highways, addressing matters such as street works, bridges, traffic regulation and management, and liability, which may be less familiar to those involved in defending public rights of way.

Any author in this field faces the challenge of addressing substantial changes to the legislative framework relating to public rights of way introduced by the Deregulation Act 2015 (in England). These changes have not yet been brought into force, and they depend upon secondary legislation and guidance for which the detail is not yet known. However, the book usefully outlines the changes as set out in the 2015 act.

In summary, *Highway Law* is primarily intended for and will be most useful to practitioners, such as legal professionals dealing with highway-related cases, local authorities responsible for highways, and individuals or organisations with a specific interest in this area of law. It is a valuable resource for understanding and navigating the intricacies of highway law, and the authors explain complex legal concepts in a clear and accessible manner, which makes the subject matter easier to grasp.

**Helen Clayton**

**The England Coast Path, book 1: the south coast** by Christopher Goddard (Gritstone Publishing, £15.99).

This chunky little book is the first of four planned guidebooks to the England Coast Path (ECP) and its adjoining coastal margin (access land). It describes the 1,137-kilometre route between the River Thames and the River Exe.

The author is naturally frustrated at the slow progress of the ECP and, although the south coast is largely accessible, where the ECP is not yet defined he indicates the best alternative route. However, the 'official alternative route' heading east from East Cowes on the Isle of Wight, on a busy, dangerous road, is a shabby alternative to a path along the coast, for which we shall argue.

Goddard divides the walk into 54 day-stretches with good descriptions, maps, photographs, and anecdotes. It is a great start to this useful series.

**KA**

## Welcome to our new staff

**Our trustees have agreed that we should give greater emphasis to our legal work which has always been a hallmark of the society.**

For instance, we want to encourage and support our local correspondents to prosecute law-breaking landowners and serve notices on their highway authorities for failure to act, and to pursue test cases on commons, greens, and paths.

We have therefore created the post of case officer (enforcement) and are pleased to welcome **Jess Tyler** to the role.

### Qualified

Having qualified with a BSc (hons) in animal science, Jess went on to manage the Abergwesyn Commons project in Powys for the National Trust. The legal questions that arose there sparked her interest in the law. Having subsequently qualified as a solicitor, Jess worked for

*Left: Jess Tyler, case officer (enforcement). Right: Jane Abey, membership secretary.*



several years on land law.

Jess's love of the outdoors has taken her trekking across Europe, Asia, and Africa as well as diving off the coast of India, including the Andaman Islands. Jess has served on the Cambrian Way Trust since its inception in 2015. She lives near Rhayader in Powys where she and her family enjoy walking and sailing.

### Membership

Our finance officer, Lucie Henwood, wished to reduce her hours, so we have divided her job. Lucie continues with the financial work, and we have appointed **Jane Abey** as our membership secretary.

Jane gave up her career in film production to raise her children. She has freelanced as an administrator for local companies for many years and, now that the children are adults, she has time to cycle with her dog, Maisie, and enjoy the parks and paths along the River Thames.



## Our training courses

The society offers two training courses: 'Protecting Commons, Greens, and Open Spaces', and 'Protecting Public Rights of Way, and the Role of Local Councils', run by our case officers. See our website for more information at <https://rb.gy/1qcwv>.

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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Registered in England and Wales, limited company number 07846516

Registered charity number 1144840

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