Open Space

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Open Spaces Society

Inside

- Plumstone Common
- Guide for local councils
- New green in Surrey

Campaigning since 1865

Open Space

Cover story

Footbridge at the junction of Ewyas Harold footpath 35B and Rowlestone footpath 8 in south-west Herefordshire (NGR SO389265), closed since August 2020 by a temporary traffic regulation order (TTRO) because the council has delayed mending it. The National Transport Casework Team has extended the TTRO to 2024, although our local correspondent, David Howerski, asked it not to do so (page 13). Photo: David Howerski.

Backword from Westminster

There is a north-country phrase ‘to give backword’. In a devastating move, environment secretary Thérèse Coffey has done just that, reversing last year’s decision by environment minister Richard Benyon to repeal the 2026 deadline for recording lost paths in England. Instead, she has delayed the cut-off by five years.

Mr Benyon decided to abandon the deadline because of lack of capacity in the Department for Environment, Food and Rural Affairs (Defra); he appreciated that the detail of implementing the cut-off is complex. Defra has no greater capacity now, but Ms Coffey does not care. This threatens the loss of countless historic paths for ever.

It’s not a problem in Wales where in 2019 ministers agreed to repeal the deadline.

Hostile

The Westminster government, unlike the Welsh, is apathetic about public access, if not hostile. Witness its failure to provide any new access under the environmental land management scheme—another undertaking broken.

There has been no further word about the government’s January pledge, that everyone should live within a 15-minute walk of ‘green or blue space’, vital for the 21.5 million people who do not have that opportunity. To kick-start action, the Better Planning Coalition (BPC), which includes the society, is promoting an amendment to the Levelling Up and Regeneration Bill in the house of lords.

This would require planning authorities to contribute to a new health and well-being objective by providing access on foot to essential facilities, and securing green space for public enjoyment.

Nor has government acted in response to the recommendations of the 2019 Glover review, for stronger protection of national parks and areas of outstanding natural beauty (AONBs). Again, the BPC is doing the government’s work by promoting amendments to the Levelling Up Bill.

Visionary

In Wales we have the visionary promise of a new national park, the Clwydian Range and Dee Valley—a stride forward. But what about AONB status for the precious but threatened Cambrian Mountains, rich in common land? Confirmation of this national park was snatched away 50 years ago without even a public inquiry because the Welsh secretary, Peter Thomas, caved in to landowner and local-authority objections to the Countryside Commission’s designation. AONB status now would go some way to redressing that sad mistake.

As the cost-of-living crisis bites, access to nature has never been more important. Let’s start near home. We have set out (page 7) how local councils can use their powers on paths, commons, and open spaces to protect and promote the public interest. We can press those councils to act in defence of these vital local amenities—despite repeated backwords from Westminster. **KJA**

A plum common

A fascinating common in Pembrokeshire is now receiving the care and attention it deserves.

Plumstone Rock is the most prominent feature of the 145-hectare Plumstone Mountain common including the adjoining Dudwell Mountain, 1.5 kilometres south of Hayscastle Cross in Pembrokeshire. The outcrop commands fine views, from the Preseli Mountains to the Bristol Channel.

The land is a designated site of special scientific interest for its dry heath, wet heath, and marshy grassland which form important habitats. It is also access land.

The society has long been involved with Plumstone Mountain common. In 1986,

Plumstone Rock. © John Christensen. Creative Commons Licence.

with help from Swansea solicitor Edward Harris, we persuaded the then Dyfed County Council to take action against unlawful fencing on the common. Commoners had enclosed the land and were claiming ownership.

Edward found that, in the mid-nineteenth century, much of the common belonged to a James Griffiths who married the daughter of Lord Milford, a local grandee. Edward traced the ownership through the generations and learnt that the last surviving owner, James Griffiths Henry, died intestate in 1963.

A relative, Evan James Henry from Winona, Minnesota, USA, had meanwhile asked solicitors in Haverfordwest to look into the ownership of the common. Advised by Edward, Evan applied to the court for letters of administration to act as trustee of the common. As one trustee cannot act alone, Evan appointed our general secretary as co-trustee in view of the society's interest in the common.

On 15 May 1992 the society and three generations of the Henry family celebrated the confirmation of their trusteeship on the common.

Involved

Thirty years on Evan's son James S Henry, from Sag Harbor, New York, is taking an active interest in the land. With the society, he called a meeting last November of those who care about the common—ecologists and archaeologists, and local people. Plumstone is much loved, for recreation and nature study.

Jim has commissioned a management plan from ecologist Jon Hudson so that we can manage and maintain the site in good condition, for instance by promoting the most appropriate grazing levels. We want to provide the best opportunities for public access and enjoyment here.

We hope to establish a friends' group, to watch over the land, help to implement the management plan, carry out surveys of flora, fauna, and archaeology, and ensure that the common can be enjoyed for informal recreation. ❐

Case File

Greenfields stays green

R (on the application of Day) (Appellant) v *Shropshire Council (Respondent)* [2023] UKSC 8.

The case concerned Greenfields Recreation Ground, owned by Shrewsbury Town Council (STC) in Shropshire. Resident Dr Peter Day (through the Good Law Project and crowd funding *inter alia*), brought a judicial review against the grant of planning permission by the respondent, Shropshire Council, to CSE Development (Shropshire) Ltd (CSE).

Section 123(2A) and (2B) of the Local Government Act 1972 (LGA), applied to STC by section 127(3), provides that, before disposing of land which is subject to a statutory trust (for example land held as open space), the council, as owner, must advertise its intention in a local newspaper for two consecutive weeks. It must consider any objections it receives to the proposed disposal. If the council disposes of land having complied with that procedure, the land is freed from any public trust and the disposal of such open space is lawful.

Disposal

LGA section 128(2)(a) provides that disposal of land which was subject to the consultation requirement 'shall not be invalid by reason that' the requirement has not been complied with. Section 128(2)(b) says that the purchaser of the land 'shall not be concerned to see or enquire' whether any such requirement has been complied with.

In October 2017 STC sold the land, which was subject to a statutory trust, to CSE. At the time STC was not aware that the land was open space subject to a statutory trust and so did not comply with the required consultation procedure under section 123(2A) LGA. CSE then sought planning permission to build houses on the land and Shropshire Council, as planning authority, granted this.

Dr Day argued that STC did not comply with the statutory requirements, the public trust continued to bind the land that CSE acquired, and the grant of planning permission should be quashed because the existence of the trust was a material factor which Shropshire Council should have considered when determining the planning application.

Clear and specific

The high court and the court of appeal dismissed Dr Day's application for judicial review. However, the supreme court held that, owing to the clear and specific wording in section 123 of the LGA, the generally applicable provision in section 128(2) LGA cannot be used to override the statutory trust arising in open space held by a local authority.

The continuing existence of the statutory trust over the land is an important factor when considering a planning application. This was not considered by the planning authority, and the supreme court

Greenfields Recreation Ground.

concluded that the grant of planning permission must be quashed.

Lady Rose's words (paras 117-8) should be heeded by all councils:

'If, as a result of this appeal, other local authorities and parish councils decide to follow the advice and take stock of how they acquired and now hold the pleasure grounds, public walks and open spaces that they make available to the public to enjoy then that, in my judgment, would be all to the good.'

Woodcock Hill village green

R (on the application of Patricia Strack on behalf of Woodcock Hill Village Green Committee) (Claimant) v *Secretary of State for the Environment, Food and Rural Affairs, Laing Homes, and Hertsmere Borough Council (Defendant and interested parties)* [2023] EWHC 655 (Admin).

The high court judge, Mr Justice Lane, dismissed an application for judicial review of the environment secretary's decision to allow the deregistration and exchange of part of Woodcock Hill village green.

The ten-hectare Woodcock Hill village green, on the south side of Borehamwood in Hertfordshire, was registered in December 2008 on the basis of 20 years' use, as of right, for lawful sports and pastimes, by local inhabitants.

Woodcock Hill village green.

The claimant, the Woodcock Hill Village Green Committee (WHVGC), had maintained the land for biodiversity until permission to do so was withdrawn by the landowner, Laing Homes, in 2018. In 2020 Laing Homes applied, under section 16 of the Commons Act 2006 (the 2006 act), to deregister 3.3 hectares (about one third of the village green) and to offer in exchange 3.6 hectares beyond the west side of the green. The release land formerly was rough grassland with scattered trees, shrubs, and hedgerows which had become largely overgrown and difficult to access, with the exception of one well-trodden footpath. The replacement land was grazed pasture and woodland.

Laing Homes did not have an immediate purpose for the release land but it made no secret of its aspiration to develop the land for housing.

Arguments

WHVGC, the society, and others objected to the application. Their main arguments were that the exchange land was further from the neighbourhood whose inhabitants had rights to enjoy the green for lawful sports and pastimes, and that there would be a reduction in biodiversity.

The inspector, Barney Grimshaw, granted the application on 24 May 2022 (ref COM/3262817). WHVGC challenged the decision, and the case was heard in the high court by Mr Justice Lane on 15 February 2023. The judgment was published on 24 March 2023.

Section 15(2)(a) of the 2006 act provides that land may be registered as a town or village green (TVG) where 'a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years'. (The land was registered under section 13(b) of the Commons Registration Act 1965, but

the criteria for registration at that time broadly were the same as the 2006 act.)

Section 16(6) of the 2006 act provides that, in determining an application for the deregistration and exchange of common land or TVG, the environment secretary (in England) shall have regard to (a) the interests of persons having rights in relation to the release land (and in particular persons exercising rights of common over it); (b) the interests of the neighbourhood; (c) the public interest; and (d) any other relevant matter.

Ground 1

The judge addressed the grounds of the appeal. Ground 1 was based on the submission that the phrase 'the interests of the neighbourhood' in section 16(6)(b) of the 2006 act is confined to the neighbourhood which was relied upon when the green was first registered. The judge considered that although one would start from the position that a word or phrase in an act would bear the same meaning throughout, in this case it did not. 'Neighbourhood' in section 16 is broader than the 'neighbourhood within a locality' in section 15.

The claimant had argued before the inspector that the interests of those living to the west of the replacement land were of less relevance than the interests of the inhabitants of the defined neighbourhood.

The judge concluded that the statutory scheme in section 16 contained no such hierarchy between the interests of those with rights, the neighbourhood, and the public. He concluded that 'the inspector was considering the interests of the "neighbourhood" in the correct way' (paragraph 88).

Ground 2

The claimant's ground 2 was that the inspector erred in his consideration of WHVGC's intention to resume management of the release land without consent. The claimant argued that,

Volunteers at work on the green.

whatever maintenance and enhancement of the proposed release land had occurred, the inhabitants of the defined neighbourhood have the right to improve the land by cutting back shrubs, creating ponds and installing benches, and that the inspector failed to take this into account.

The judge decided that the inspector did have express regard to this but that he did not need to reach a conclusion on who was right, since the inspector placed weight on the fact that little work had been carried out since permission was withdrawn by Laing Homes. The appeal therefore failed on both grounds.

Comment

It is interesting that the 2006 act uses the term 'neighbourhood', with two different meanings, in two sections. The judge found that 'neighbourhood' in section 16 does not have the same meaning as in section 15 not least because it would make no sense if the entitlement belonged to a locality (as it does for TVGs registered under section 4 of the Commons Registration Act 1965). Indeed, even if it did have that specific meaning in relation to an entitlement belonging to a neighbourhood, it must have a broader, less well-defined meaning in relation to an exchange of common land.

The society donated £3,000 from its legal fund towards WHVGC's costs in the high court. ❐

Stokes Field saved

We are pleased that Elmbridge Borough Council in Surrey has agreed voluntarily to register a new village green.

Our Elmbridge local correspondent Rodney Whittaker, persuaded the council to register Stokes Field at Long Ditton. He tells the story.

When One Tree Hill, green-belt land owned by developers Taylor Wimpey, became vulnerable to development, residents applied for village-green status for both that area and the adjoining council-owned Stokes Field (eight hectares).

Elmbridge Council objected to the application for Stokes Field. The application for One Tree Hill is opposed by Taylor Wimpey and, at the time of writing, will be determined following a public inquiry in April.

As an external member of the council's countryside consultative group (CCG), I proposed that the council voluntarily dedicate Stokes Field as a village green. Local councillors supported this, but the council's countryside officials and its lawyer opposed it. They suggested that it would make future management of the land, which is also a local nature reserve, more difficult.

They cited the Inclosure Act 1857 and Commons Act 1876 which restrict what can be done on greens. I countered with the *TW Logistics* v *Essex County Council* supreme court case of 2021 (OS summer 2021 page 5) which ruled that a village green owner can continue with any legal activities conducted in the 20-year qualification period. Equally, local residents can continue only with the recreational activities they have enjoyed in that period.

Stokes Field. Photo: Rodney Whittaker.

I also said that continuing opposition at the Stokes Field public inquiry would cost the council thousands of pounds in legal fees and require substantial time from officers. Since the council had been happy to allow the public to use the area throughout the 20-year qualification period and before, this might not be seen as appropriate use of ratepayers' funds and council time.

Invited

The CCG agreed and I was invited to put the case again to the council's overview and scrutiny committee in February 2023. Again, the countryside officers and lawyer spoke in opposition but the recommendation to the council's cabinet for voluntary dedication was approved. At the cabinet meeting in March, the vote in favour of withdrawing the opposition to the application and making a voluntary dedication was unanimous.

No less than 57 per cent of Elmbridge's land area comprises registered commons and other accessible open spaces and the council does excellent work managing and protecting these. It deserves credit for being willing to listen to the society's arguments. We hope that other councils will follow its example. ❐

Taking action

New guide for local councils

Many town, parish and community councils (local councils) are unaware of the extensive powers they have to deal with problems on open spaces and paths. To help them the society has published a guide on how to protect these important assets—*What local councils can do for public access to town and countryside*.

The powers are scattered in different and sometimes obscure pieces of legislation. The guide explains the powers specifically conferred on local councils, and the powers which, although available to the public in general, are best exercised by the local council because it has the authority and more resources than most individuals and voluntary organisations.

For instance, local councils are well placed to take enforcement action against unlawful encroachment on a common or green. They can voluntarily register their land as a town or village green and protect unclaimed land. They can force the highway authority to remove obstructions on a public right of way, and use their unique power of veto to prevent the extinguishment or diversion of a route with vehicular rights, including roads and highway verges, in the magistrates' court.

Never a common

The society is energetically applying for the re-registration of lost commons, but at the same time must scrutinise and respond to applications to remove land from the commons registers. We object where we believe that the criteria for deregistration are not met, and occasionally we withdraw our objection when satisfied that we got it wrong.

Sheringham Common in Norfolk is one such case. Norfolk County Council has granted an application to deregister the whole of Upper Sheringham Common, north of Bodham which is six miles west of Cromer. The common has been used

Left: Scorton village green in North Yorkshire, voluntarily registered by the parish council in 2020. Photo: Scorton Parish Council. Right: Illegally blocked bridleway at Aberedw in Powys. The community council could exercise its power under section 130(6) of the Highways Act 1980 to get it reopened. Photo: Graham Taylor.

Upper Sheringham Common, wrongly registered. Photo: Ian Witham.

as a caravan site for decades, and permission was given in 2008; the site was extended in 2016—all without consent under section 38 of the Commons Act 2006.

The application was made under paragraph 7 of schedule 2 to the 2006 act, by the owner, Sheringham Poors and Ploughlets Trust—a charity and the freeholder. Paragraph 7 enables deregistration where, at the date of provisional registration (in the late 1960s), it can be shown that the land had none of the characteristics of waste, common land, town or village green or land subject to shared rights.

The society initially objected, as the application did not satisfy the criteria in paragraph 7, and indeed, the applicant had suggested that the land was waste prior to its original provisional registration. However, our objection elicited more professional research and analysis by Leathes Prior, Norwich solicitors, on behalf of the applicant.

Allotted

The land was identified in an inclosure award of 1811, by which it was allotted to trustees for the support of the poor. This is not a promising basis on which to found opposition to an application under paragraph 7, because, by virtue of inclosure, the land had ceased to be waste.

Yet the land continued to be known as Upper Sheringham Common. Quite often, land continues to be called 'common' even though it has long since been inclosed. That is particularly likely here, where the land was a poor allotment, and no significant productive use was made of it—at least until the caravan site was opened.

There was convincing evidence that the parish council applied for registration of the land as common land under the Commons Registration Act 1965 solely on the basis of its name. Yet the 1811 award ensured that there was no waste whatever left within the parish.

Deposed

The applicant had deposed that, prior to provisional registration, the land was unkempt and covered in bracken. But the inclosure award required the trustees to maintain one of the adjoining fences.

We could not argue that the land continued to be waste, since it had been inclosed in 1811 and remained enclosed ever since. The society therefore withdrew its objection.

Deregistration of an entire common is unusual, and unwelcome. But evidence that it had not been common land since inclosure in 1811, and should never have been provisionally registered, was convincing, and the application was granted on 7 July 2022. ❐

Far & Wide

Dartmoor-camping appeal

We are delighted that the Dartmoor National Park Authority has been granted leave, and has agreed, to appeal against the high court judgment that there is no right to backpack-camping under the Dartmoor Commons Act 1985. The society has applied to intervene in the court of appeal to assist the authority. We are extremely grateful to Richard Honey KC, Ned Westaway, and Esther Drabkin-Reiter of Frances Taylor Buildings who have offered to act for us *pro bono*.

The case is to be heard on 18 July.

Cumbrian fences renewed

We objected to an application by the Caldbeck Commoners' Association for the retention of temporary fencing around three plantations, granted in 2008, for a further 15 years. The fencing, on Caldbeck Common and Uldale Fells in the Lake District National Park, Cumbria, is more than three kilometres in total. Natural England and the park authority supported the application.

The Friends of the Lake District and the society argued that no evidence was provided that the fencing would improve nature conservation, yet Natural England must have set targets when the fences were proposed originally. It was disingenuous to describe the works as 'temporary' when, after another 15 years, they will have been in place for 30 years and it is unlikely the commoners would then wish to see them removed. The fences were a visual intrusion, and access was being restricted. We asked for a public inquiry to determine this.

Caldbeck Common. Photo: Ian Brodie.

There was no inquiry and despite our objections, inspector Barney Grimshaw gave consent. He said that Natural England supported the applicants' assertion that the fences improved nature conservation, but did not explain how. He said it was 'likely that steps will be taken to ensure that access is maintained' without any certainty. He concluded that the fencing was resulting in public benefit through nature conservation and landscape enhancement. It was a flimsy decision. See OS autumn 2022 page 4 for our discussion about tree-planting on upland commons. (*Ref COM/3296835, 31 January 2023*)

Adleymoor not common

In 1900 the Board of Agriculture approved a scheme of regulation for Adleymoor Common, two kilometres west of Leintwardine in Herefordshire, under the Commons Act 1899. This act provided a model scheme for local councils to adopt, and conferred powers to implement by-laws. Only part of the common regulated under the scheme was registered under the Commons Registration Act 1965. In 2019 we made an application, under the Commons Act 2006, schedule 2, paragraph 2, to re-register the omitted land.

There were objections and, following further research at the National Archives, which included examining the plans and field books produced under the Finance Act 1910, it became clear to us that the scheme of regulation either had not intended to include the omitted area, or had wrongly included it (it not being common land at all).

In March Herefordshire Council, the commons registration authority, accepted the society's request to withdraw our application.

Peaslake alleyway saved

A threat to deregister common land in Peaslake, Surrey, has been withdrawn after we led opposition to the proposal.

The owners of Ranger's Cottage, Peaslake (which is ten kilometres south-east of Guildford in the Surrey Hills Area of Outstanding Natural Beauty) applied to Surrey County Council to remove from the commons register a strip of land (part of Hurtwood Common); this formed a passageway to the north of the house. The passage was left open when some of the common was enclosed long ago for domestic use, but a wicket gate now closes off the end nearer Ewhurst Road.

Under paragraph 6 of schedule 2 to the Commons Act 2006, the applicants had to show that on and since 8 May 1968, when the land was provisionally registered, the passageway was within the curtilage of a building. However, they withdrew the application in the light of our objections that the passageway was never part of the curtilage of the house. We now expect them to remove the wicket gate which gives the false impression that the passageway is not common land.

Ranger's Cottage with an unlawful gate on the right (encircled), preventing access to the common. Google streetview.

Unlawful fencing on Melinbyrhedryn Common, nine kilometres south-east of Machynlleth in Powys, photographed by one of our members in January. Thanks to the member's efforts and those of Powys County Council, the owner has now removed the fencing, leaving only the wooden posts.

The Pound is sound

The owner of the Pound, a piece of Whiteparish Common, 13 kilometres south-east of Salisbury, applied in May 2021 to Wiltshire Council to deregister the land under paragraph 6 of schedule 2 to the Commons Act 2006. The land contained sheds and a hardstanding.

The sheds had received planning permission just before provisional registration on 10 April 1968, and we accepted that part of the land had been covered by buildings or the curtilage of buildings since then. However, we and others objected to the applicant's inclusion of adjoining land for which no evidence of mistaken registration was provided.

The council determined the application in March, agreeing with us that the adjoining land should not be deregistered. A fence and hedge on the common are therefore unlawful and we shall pursue their removal.

The Pound with unlawful fence and hedge to the right. Google streetview.

Secret code

The Code of Practice on Conservation, Access and Recreation: Guidance for the Environment Agency and Water and Sewerage Undertakers was published in 2000 and applies only to England. Replacing a code of 1989, it contains statutory guidance to the named bodies on matters which they should consider, when carrying out their duties, relating to conservation, access, and recreation.

For instance, it states: 'The relevant bodies should normally allow freedom of access to all land and water of natural beauty, amenity or recreational value. Access should be considered for the widest possible range of activities. … Wherever possible they should provide access by means of marked paths for walkers and, where appropriate, for other users, including equestrians and cyclists. The relevant bodies should also consider the formal dedication of permitted paths.'

However, the code is not available online, so we have published it on our website, with other semi-secret documents, at *https://bit.ly/3VFVpV7*.

The code in Wales

That code does not apply to Wales, and we invited Huw Irranca-Davies, Member of the Senedd for Ogmore, to ask the Minister for Climate Change, Julie James, whether the 1989 code was still the current one in Wales. If so, we requested that she place a copy on the Welsh Government website and set out a timetable to publish a new one.

In response to Huw, Julie James confirmed that the 1989 code was still in operation. Her officials were 'currently assessing both the most appropriate means of promoting the code, and whether an update to the code in Wales is needed'. We shall watch to ensure it is published and reviewed. We have published the 1989 code on our website (see link opposite).

An irregular exchange

Longhorsley Parish Council in Northumberland applied to the Planning Inspectorate (PINS) to deregister 139m^2 of the village green under section 16 of the Commons Act 2006. The green is a strip of grass verge alongside East Road, and the application was to allow the construction of an access road to planning-approved residential development nearby.

Where the land to be deregistered is less than 200m^2 there is no requirement to offer land in exchange, but the guidance

The deregistered land. Photo: Denise Metcalfe.

says that the Secretary of State for Environment, Food and Rural Affairs 'will usually expect land to be offered in exchange … as her policy is not to allow our stock of common land and greens to diminish'.

We objected, arguing that the deregistration offered no public benefit and that there should be exchange land. After the application had been submitted and the inspector, Barney Grimshaw, had held a site inspection, the owner of the adjoining land, and the future owner and developer of the land in question entered into a legally-binding agreement to register two acres as village green (without announcing its boundaries) if the deregistration was allowed. The inspector then approved the application.

Try our training

The society offers professional training for local councils and others on protecting commons, greens, and open spaces, and on rights of way. See *https://bit.ly/410nfx7*.

While we are glad there is to be exchange land, we consider that the decision to grant the application, in the light of the agreement but with no consultation with objectors, is a breach of natural justice. The application ought to have been rejected and a new application made with the replacement land offered as part of it. We have complained to PINS. (*Ref COM/3303863, 18 April 2023*)

Kendal flood-scheme

We have slated the decision of a planning inspector to allow flood-defence works on Gooseholme Common in the heart of Kendal in Cumbria.

The Environment Agency's application is for permanent, extensive, flood-defence works alongside the River Kent. With the Friends of the Lake District we opposed the application under section 38 of the Commons Act 2006 for works on common land.

We were concerned about the severely detrimental effect on the common, a substantial area of green space in the town. This is enjoyed by the public for informal recreation and is an important landscape feature of historic value.

We argued that, in view of the scale and the intrusive nature of the works, the Environment Agency should have offered land in exchange for that to be taken, under section 16 of the Commons Act.

Our AGM

Come to our annual general meeting on Thursday 6 July at 11am at Friends' House, Euston Road, London NW1 2BJ, or join us by video-conference. Let us know if you would like a slot in the afternoon session to talk about your campaign. Details are enclosed with this issue of Open Space.

In granting consent, the inspector, Claire Tregembo, recognised that the works would have 'some impact on the common', but she considered that these were outweighed by the public benefit *(Ref COM/3296303, 27 February 2023)* ❐

Gooseholme Common in Kendal. Photo: Ian Brodie.

Path Issues

Shocking U-turn

We have condemned the environment secretary's decision, announced in March, to break the government's undertaking (given last year) to ditch the 2026 deadline for recording lost paths in England (OS spring 2022 page 2). Thérèse Coffey has now decided not to repeal the deadline but to set it back by five years (see page 1).

This means that on 1 January 2031, public rights over thousands of paths, which are public highways but not yet recorded as such or not recorded correctly, will be extinguished and lost for ever.

We know from experience that there is no way that volunteers can research all the lost paths before the deadline, and the surveying authorities no longer have the resources to process the applications in a timely manner.

We also know that the introduction of the guillotine is complex in law, which was one of the reasons why it was abandoned last year, Defra recognised then that it did not have the capacity to sort this out. It has even less capacity now.

We shall press whomever is in power after the next election to repeal this deadline once and for all.

Herefordshire's failings

Our local correspondent for south Herefordshire, David Howerski, tells of the struggle to get Herefordshire Council to look after its paths.

In January 2022 Herefordshire Council moved its public rights of way (PROW) department from its third-party public-realm contract with Balfour Beatty Living Places (BBLP) back into council control. OSS member Hugh Vernon and I, with the local access forum, had campaigned for this for three years.

But the hoped-for improvement in public-path maintenance has not yet materialised. We still have an allocation of only two part-time workers for 3,400 kilometres of public paths, dealing with thousands of backlogged defects. The main role of the rights-of-way staff was to produce the necessary documentation that allowed BBLP to make a profit for its shareholders. With 44 paths 'temporarily' closed, 29 of which need new bridges, there is a dire need for adequate funding and staffing.

We have documented and reported defects over 12-month periods. Then we used the Freedom of Information Act (FOI) to find out what happened. The responses revealed a lack of capacity to repair, let alone to inspect, paths. The council prioritises problems in such a way that defects take between 18 months and three

Little Marcle footpath 4 on the Herefordshire Trail, impossibly obstructed in May 2022, and not cleared before harvesting despite a report to the council.

years to be addressed. BBLP focuses on profit so that, for a damaged footbridge, an £1,800–£2,000 installation by a lengthsman and volunteers becomes an £18,000 light-engineering project.

We have also been using FOI questions and requests for internal reviews to discover the council's use of temporary traffic regulation orders (TTROs). This has demonstrated widespread misuse of TTROs to evade statutory duties.

Moreover, there are countless paths which are blocked by crops and vegetation, with impossible stiles.

The council plans to move around 80 technical and engineering staff back in-house over the next year. We hope this may signal an improvement in both staffing and funding for the PROW department: we shall continue to campaign for that.

A sharp eye

We are delighted to have appointed Ken Sharp as our local correspondent for West Lancashire District, Knowsley, Liverpool City, St Helens Borough, and Sefton Metropolitan Borough. We have no coverage in this part of England so his appointment is especially welcome.

Ken moved to Ormskirk two years ago from west Cornwall where he had lived for 20 years and served as rights-of-way officer for the Ramblers. He looks forward to using his experience in the north-west.

Ken searching for the definitive route of a blocked footpath in St Buryan Lamorna and Paul parish in Cornwall.

One of many unrecorded paths over Kilvey Hill, Swansea. The hill is threatened by Skyline Swansea Ltd's massive proposed leisure-development, including gondola stations, gondolas, visitor building, luge tracks, chairlift, skyswing, zipline, and associated buildings. One of the luge tracks would destroy this quiet path. Skyline claims that no public access would be lost, but it is ignoring the unrecorded routes. The society is backing local members in fighting the plan.

No access yet in ELMS

Despite ministers' promises to parliament that there would be payments for new and better access under the Environmental Land Management Scheme (ELMS), no access has yet been forthcoming.

In January, the government's prospectus for ELMS said it would 'explore how we can pay for actions covering permissive access' but we are not aware that any exploration is yet taking place.

Permanent please

Meanwhile, with six other recreation organisations, we have written to the environment secretary Thérèse Coffey, asking that payments should also be offered for permanent access. Such access is far preferable to permissive access

because it gives certainty to users, it is shown on Ordnance Survey and other publicly-available maps, and public money must provide good value, which is poorly realised in a short-term scheme.

The Paths for Communities Scheme, run by Natural England on behalf of the Department for Environment, Food and Rural Affairs (2012-2014), paid for permanent paths through voluntary landowner dedications.

Agri-payments in Wales

The Agriculture (Wales) Bill is reaching the end of its passage through the Senedd, and we are disappointed not to have had an opportunity to improve the sections on public access. The bill allows agricultural payments for 'maintaining and enhancing public access to and engagement with the countryside and historic environment'. Clearly, payments must not be made merely to maintain existing access.

We have argued that money must be for improvements. Wales Environment Link has done a fine job coordinating the views of its members but its access amendments were not debated. We shall have to ensure that when it is implemented the act does encourage more and better access, and that there is effective regulation so that those who block paths are penalised.

Ramblers Cymru has estimated that 50 per cent of the paths in Wales are blocked or otherwise difficult to use—a shameful state in a country which is so dependent on tourism. Agricultural payments could help to solve these problems.

Padlocked gate obstructing Tetsworth footpath 22 in Oxfordshire. We have served notice on the county council under section 130A of the Highways Act 1980 for its removal (with one for another padlocked gate, and an impassable 'stile' also in Tetsworth).

Purbeck path improved

Harry Alexander, our local correspondent for Bournemouth and Poole, has persuaded Dorset Council to install an accessible gate on a popular path linking Worth Matravers and the South West Coast Path, between Chapman's Pool and St Aldhelm's Head.

The new gate opens up the obstructed path, which was blocked by a difficult stile, and a padlocked gate with barbed wire. Harry has lobbied the council about this for 20 years; the route was impassable by anyone with impaired mobility.

The path provides access not only to the national trail but also to a beautiful sunken garden to the south, which is managed and maintained by families of those lost to war. The paths are set in a magnificent stretch of countryside with superb views.❐

Left: old gate, right: new stile on the Dorset Coast. Photos: Harry Alexander.

Reviews

A Most High-handed Proceeding: Irton and the Right of Way Case, 1897-1907 by Paul Pharaoh (Bookcase £15, softback 319 pages; numerous b&w illustrations and three sketch-maps).

This is a remarkable and lucid account of a massive struggle for a footpath on the western edge of the Lake District. Mr Pharaoh, a solicitor, comes of a family long-established in Eskdale whose name crops up occasionally in his book. He tells how Thomas Brocklebank, a Liverpool shipping millionaire, blocked an ancient path on his newly-bought estate, and of how in the winter of 1897 he was challenged by a local farmer, Hannah Sharp, travelling to Irton church. A decade-long legal battle ensued.

Deferential

At one point the path crossed the lawn in front of his home, Irton Hall (NGR NY105005)—'a serious injury to its residential amenity and market value'. The same considerations still drive the diversions sought by the noveaux riches buyers of old properties in order to shift hoi polloi to a distance. Deferential local councils make section 119 orders citing the owners' need for privacy and security. In our more egalitarian times the fact that diversion of the path will also add thousands of £s to the value of the property is rarely if ever called in aid, presumably because naked greed would not go down well with the local authority.

Hannah Sharp complained to the parish council who unhesitatingly backed her and forwarded the complaint to the Bootle Rural District Council (RDC) which set up an inquiry. Such paths were vital arteries in a countryside in which motor cars were novelties, bikes expensive, and public transport was the carrier's cart on market days. Hence the 52 witnesses who appeared for the parish council at the inquiry.

The inquiry reported in favour of the parish council and the RDC sought a meeting with Brocklebank in the hope of a compromise. This was rebuffed and he now brought an action for trespass against a retired farm labourer, the octogenarian John Shepherd, and five young men from local farms who had persisted in using the path. This led to a hung jury at Carlisle assizes in January 1899. Brocklebank in effect closed the estate, but a wealthy local lawyer and businessman, John Musgrave, sought to defend the route as a path for people going to and from the church, and he won. But the judge ordered the parties to sort out the details of the route before he would grant an injunction forbidding its obstruction. Musgrave now proved as obstructive as Brocklebank, but eventually the 'church way' was confirmed. And in 1949 the National Parks Act enabled the disputed paths to be recorded on the definitive map.

Clarification

Mr Pharoah describes the legal battles and their personalities straightforwardly and with proper clarification of the lawyers' language and procedures for the layman. At the same time he sets his story against the social, family, and political background of the place and period. Parish and district councils had been created only in 1894 in order to democratise local government; Irton was one of the first tests of their efficacy.

Chris Hall

Maurice Philpot remembered

Maurice William Philpot was born on 28 June 1942 and grew up in a cottage on the edge of Scole Common near Diss in south Norfolk. This probably gave him his love for open spaces, writes his friend of 30 years, Phyllis Mills.

Maurice's father was a teamsman (he worked the horses on the land) on the Thelveton Estate which allowed Maurice free range of the meadows around the estate, learning about living creatures.

Maurice thoroughly researched whatever took his interest, an asset when he became clerk to several parish councils. He could advise them on the law and on how and where to obtain grants, and he helped them with projects. The lasting memory of several charities, and parish and parochial church councils is that 'he kept us on the straight and narrow'.

Village heritage

Burston village, near Diss, had lost interest in its Strike School, the reminder of the longest strike in English history (1914-39) when the children refused to go to the village school. Their teachers, the Higdons, had been dismissed because they opposed the farmers and parson who claimed to rule the village. Money came from many sources, including trade unions, to build the one-room school which stands on the little village green. Maurice worked to renew interest in this village heritage, and he helped to install a maypole on the green. In gratitude he was made an Honorary Citizen of Burston and Shimpling.

The project of which he was most proud is the creation of St Clements Common at Rushall. His friend, Daphne Buxton, who lived in a house called St Clements, owned land on which the village smithy once stood. For 20 years she had wondered what to do with it, wanting to secure its future. She confided in Maurice her childhood memory of Epping Forest being saved from massive encroachment by the existence of rights of common.

They researched how to create a common, and sought advice from the OSS. The first action was to choose an individual on whom to confer the rights of common. From her bed, Daphne, who was failing, selected Maurice. There were several rights to consider, but eventually they chose a right of estovers, to gather wood and bracken, since this would be of practical use to Maurice.

Maurice then set about registering the land as common; this proved to be a novel exercise for Norfolk County Council lawyers. Eventually it was registered and Daphne conveyed the land to the care of Dickleburgh and Rushall Parish Council. She lived long enough to know that her gift would be used for recreation and as a natural resource for everybody for ever.

Once a year Maurice exercised his right of estovers by visiting St Clements Common and bringing home a few fallen branches. However, by 2015 he knew the time had come to pass on his right and, as the OSS was celebrating its 150th anniversary that year, he was delighted to mark the event by presenting his right of estovers to the society.

Maurice's life of service ended on 11 February 2023. We shall remember him for his kindness, generosity, and strong sense of community.

Phyllis and Maurice on a narrow boat at Crick Marina in 2008.

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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