

# Open Space

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 Open  
Spaces  
Society

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- Our election manifesto

Campaigning since  
**1865**

# Open Space

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## Cover story

Sign on West Mersea village green (north), erected by West Mersea Town Council, Essex, in August 2023, 18 months after illegal fencing was removed from the green. It is thanks to prolonged pressure from residents that the fencing has gone and the sign has been posted. The sign is a useful reminder of the location of the green, and the laws which protect it (*see page 4*).



## Path-block shock

**In January, the BBC revealed the shocking results of its survey on the state of public paths in England and Wales.**

Paths, it showed, are blocked at 32,000 points, that is one obstruction every four and a half miles—and the problems are growing. Seventy three of the 118 highway authorities (excluding London) answered the BBC's questions, reporting a total of 31,816 obstructions, an increase of 4,000 (15 per cent) in the ten months since the end of 2022.

### Under-estimate

This is surely a significant under-estimate. Many people do not report problems or know how to, thousands of unrecorded highways were not included in the responses, and one can guess that the 45 authorities which were silent were among the worst performers.

In an interview with the BBC on an unobstructed path in Bradford-on-Avon, Wiltshire, I was asked to comment on the supposition that, with the cost-of-living crisis, authorities must give priority in their budgets to social care.

I retorted that there should not be a choice. In allocating budgets councillors must recognise that investing in paths is excellent value for money, for health and well-being, tourism, and the economy. Highway authorities have duties which they must carry out. This is why the society is stepping up its legal action against negligent authorities and serial path-blockers.

In September 1987, the Countryside Commission (predecessor but one of Natural England) announced that 'the rights-of-way network will remain the single most important means by which the public can enjoy the countryside'. It has remained so—and countryside close to home has never been more valued.

It is now a year since the government promised, in its Environmental Improvement Plan, that (within five years) 'the public will benefit from a new commitment to access green space or water within a 15-minute walk from their home'—but there is nothing yet to show for this. We have pressed for the dedication of land as town or village greens, safe from development with public rights of recreation. So far, zilch.

### Reversed

However, the new environment secretary, Stephen Barclay, has, refreshingly, reversed some decisions of his predecessor Thérèse Coffey (for whom access provision was 'a level of detail' too far). Mr Barclay has announced that the environmental land management scheme will fund some permissive public access (*see page 14*), and his officials are working on the detail. We must help them ensure that well-publicised access is provided where it is needed, and that no payment is made to a farmer or land-owner whose paths are not in good order.

If this is done properly it could help to reduce the growing number of obstructions revealed by the BBC. **KJA**

# Restoring our commons

We have two recent successes to report in our ongoing project to claim lost commons for the benefit of the public.

**Our commons re-registration officer, Frances Kerner, is applying to register lost commons in Cumbria and North Yorkshire where the registers remain open until 2027. She also responds to objections to applications she made before the closing date of December 2020 in the first pioneer areas and she attends hearings and site visits.**

We have celebrated our first win in North Yorkshire. The Planning Inspectorate has granted our application to register one third of a hectare at Nesfield (0.8 acres), just over two miles north-west of Ilkley. This comprises



*Newly-registered Nesfield common, Photo: Colin Speakman.*

two pieces of grassland separated by a path which leads from Gill Lane to a road to the north.

In 1968, an application was made to register as common several pieces of land in the village of Nesfield, but there was an objection to these two pieces, and the commons commissioner refused to register them because they had been sold away from the manor of Nesfield with Langbar in 1891.

At that time decisions were subject to the ruling in *Box Parish Council v Lacey* [1979], whereby applications to register commons failed if the land was not still

owned by the lord of the manor.

However, part 1 of the Commons Act 2006 reopened the opportunity to rescue lost commons which were excluded in these circumstances, *Box* having been overturned by *Hampshire County Council v Milburn* [1990].

Under paragraph 4 of schedule 2 to the 2006 act the land became eligible for re-registration. The society's application drew on the evidence provided at the hearing that the land was manorial, which means that it remains common land.

## Lizard legacy

Our application to register as common 0.63 hectares (1.5 acres) of land on Garro Lane, just south of Mullion, was granted by Cornwall Council. The land is up to 25 metres wide, a legacy of the extensive wastes which once covered the Lizard peninsula.

There was an objection to the application to register the land in 1968, the applicant withdrew, and the provisional registration was cancelled. In our application we provided evidence that the land is waste of a manor and thus common land. Accordingly, it has been registered, and is safe from enclosure.



*Garro Lane, Mullion. Photo: Landman LLP.*



## Objectors matter

*Kirklees MBC v Secretary of State for Transport [2023] EWHC 2459 (Admin).*

This was a judgment by Fordham J in the planning court (part of the high court) in Leeds.

The National Transport Casework Team (NTCT), acting for the Department for Transport, had made an order under section 247 of the Town and Country Planning Act 1990 stopping up a 25-metre stretch of Marsden Street at Skelmanthorpe in Kirklees, west Yorkshire.

The council objected to the order, apparently on the grounds that it made insufficient provision for an alternative right of way. Foolishly, the NTCT refused to treat this objection as validly made, saying that any replacement highway was beyond the order's scope.

The NTCT also refused to treat as valid an objection from the Upper Dearne Valley Environmental Trust (named as one of the interested parties). Under section 252(4)(a), the NTCT was required to hold an inquiry into the authority's objection, but instead, it confirmed the order.

The Secretary of State for Transport consented to judgment, but the developer, Lovell Partnerships (LP, the other interested party), declined to consent, instead asking for a two-year deferment to the order taking effect on the grounds that the highway was now unsafe to use (presumably because LP had commenced work).

The judge refused deferment, observing that the order was legally invalid; there

was 'no basis for this court to take any step—or make any finding—as to safety or unsafety'. Deferment would provide a two-year period 'restricting public rights of way, without any lawfully-taken decision in which objections and impacts have been considered.'

The judge deferred consideration of costs against LP, but in a subsequent ruling awarded £4,000 in favour of the authority (which already had recovered agreed costs against the secretary of state).

## Comment

The society is familiar with NTCT's practice of pretending objections are invalid. In a meeting in June 2023, some NTCT officers appeared to recognise this practice was unsustainable.



*The path across the development site at Kirklees. Photo: Stephen Hill.*

It is shocking that Kirklees's objection was made by the highway authority about highly pertinent matters, and that the NTCT had, as so often in the past, steam-rolled through an order, ignoring objections. It should now know better, but there is anecdotal evidence that the practice continues.

*Tell us urgently if you object to a section 247 order and the NTCT declines to treat your objection as valid.* □



## Green battle at West Mersea

**The old, low-lying parts of West Mersea in Essex were, at abnormally-high equinoctial tides, subject to flooding of streets and houses. This included the village green, VG241.**

Our member Ian Draper reports on a campaign to free the green, which lies immediately to the south of the Dabchicks Sailing Club, and includes an apron-shaped concrete area, adjacent to a street known as Coast Road.

Essex County Council (ECC) undertook to install a moveable flood-barrier here. In spring 2021 it began work which involved blocking off Coast Road, which ran alongside the green. However, the public was still able to walk over the concrete apron to get past the works.

Free access to the green was suddenly prevented when the sailing club installed a security system of fence, locked gates, and signage on the green, without any consultation with residents. The signage stated that access through the gates would be restricted to members of the sailing



*Unlawful works on the green.*

club and two local residents whose properties are adjacent to the club. The security fencing was erected in September 2021, and the concrete-apron part of the green became out of bounds.

The works were illegal under section 12 of the Inclosure Act 1857 and section 29 of the Commons Act 1876. They included a safe, level footpath over the hardstanding, but Dabchicks banned public access to it.

Local people told the ECC construction manager about this, but nothing was done as the manager was probably initially unaware that the concrete apron was part of the green.

After continued lobbying, Dabchicks finally relented, and in February 2022 the security fencing was removed, and the green was free again (*see front cover*).

## Fletton Field for ever

Thanks to North Northamptonshire Council, Oundle Town Council, and the Fletton Field Association (FFA), the future of Fletton Field in Oundle as an asset of community value and publicly-accessible green space has been secured. Tony Hoyle of the FFA tells the story—

Fletton Field, 0.7 hectares (1.7 acres) of green space in the centre of Oundle, was sold to the Guardians of the Poor by John Smith's Brewery in 1899 and was originally used as allotments for the workhouse. Subsequently, Northamptonshire County Council acquired title under the Local Government Act of 1929 which abolished Poor Law Unions and transferred their assets and powers to local authorities. The field was then used by Oundle primary school until the school



*Fletton Field, Oundle.*

was relocated in 2016.

Northamptonshire County Council applied for outline planning permission to build on Fletton Field in 2015, and the Oundle Recreation and Green Spaces Group began a campaign to save the field. It applied for town green status but this failed on technical grounds, and in 2019 Northamptonshire County Council made a second application for outline planning permission to build on the field.

Both planning applications were unsuccessful; principally because the site was not surplus to requirements as an area designated as open space for sport and recreation; an alternative area of open space of equivalent value and level of accessibility was not available; and the development would have had a negative impact on the surroundings.

### **Opportunity**

Local government in Northamptonshire has since been reorganised, because of Northamptonshire County Council's financial difficulties, and two unitary authorities came into being on 1 April 2021. North Northamptonshire Council inherited title to Fletton Field. This created a new opportunity, and the FFA was formed to reactivate the campaign.

It prepared a business plan, made

representations to both North Northamptonshire and Oundle Town Councils, and endeavoured to elicit support from local organisations, and to engage once more with local people.

We were delighted when, in October 2022, the North Northamptonshire Council's executive (1) confirmed use of Fletton Field as public open space, forgoing any potential development value from it; (2) authorised transfer of the site, and noted that any transfer must be for future use as public open space; (3) noted that Oundle Town Council was interested in acquiring the site as public open space; and (4) encouraged continued support for community activity on the field by the FFA.

North Northamptonshire Council is drawing up a form of agreement for transfer of ownership to Oundle Town Council, and we look forward to the implementation of plans to use the field for the benefit of the community.

### **Lease at Llanllyfni**

The Cwtin Committee was established to challenge a plan for allotments on the Cwtin playing field in Penygroes, Gwynedd. Its secretary, Eluned Vaughan Roberts, writes of the campaign—

In 1948, Cwtin field was bought by Llanllyfni Parish Council from the British Transport Commission for £50, to provide a leisure ground for the residents of Llanllyfni Parish. The field level was low as its contents had been used to build the railway. However, it was a decent play area and it was much enjoyed over the decades.

In 2000-2001, a bypass was constructed, and permission was given by Gwynedd Council for some of the road waste to be deposited on the field. This was a reasonable idea as it would raise the level of the playing field. However, the disposal of the waste affected the drainage, and the field became very wet



*Cwtin field, Penygroes. Photo: Mr and Mrs J Alan Roberts.*

in winter, so use was minimal.

By chance, in March 2023, the residents discovered that the village community hub had, since September 2022, been discussing an allotment scheme with Llanllyfni Community Council. The intention was to obtain a grant to fund allotments on Cwtin playing field.

This is the only playing field available for use free of charge in Penygroes—a village with 1,700 population in what is considered a deprived area.

Cwtin Committee was set up for the sole

purpose of challenging the allotment plan and to reinstate the playing field for the community. Our mission was to get the lease of the Cwtin land from the community council. We had to prepare a project plan which could also be used to apply for funding to pay for the work required to improve the land.

While writing our plan, a member of our committee contacted and enrolled as a member of the Open Spaces Society. The

### Wild camping

We are sorry to report that the Darwalls have been granted leave to appeal to the supreme court in the Dartmoor wild-camping case (see *OS* autumn 2023, page 3). We shall again seek leave to intervene.

society gave us invaluable advice and support over many months. This was a massive help and reassured us that we were doing the right things in our plan for the field.

In November 2023, after many months of indecision, the community council agreed to allow Cwtin Committee to lease the land and to reinstate the community open space. ◻

## Come to our AGM

on Thursday 4 July 2024

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

We hope to see you at our AGM on 4 July, in person (preferably) or online. 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 22 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 22 May. Candidates must have been individual members of the society since 22 May 2023. 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](mailto:office1@oss.org.uk)), if you have any queries.



# The election approaches

With a Westminster election almost certain to be this year, we are preparing our manifesto for candidates.

**This is the first election since the pandemic which highlighted the importance of good-quality open space and paths close to people's homes. Some of our proposals reflect this.**

## Commons and greens

- Local authorities to have a duty to resist encroachment on common land and town and village greens (TVGs). At present this is only a power, shared with others, meaning that no one acts.
- Developers to be mandated to provide registered TVGs as part of development over a certain size or density, giving local people rights there and ensuring they endure in perpetuity.



*Village green in Witney, Oxfordshire, dedicated (with a new footpath) by developer Richmond Care Villages in 2020 in return for the society withdrawing its objection to a footpath diversion.*

- Lost commons to be registrable throughout England. Currently this can be done only in Cumbria and North Yorkshire, and throughout Wales. This will restore common land, safe from development, with a public right to walk, and sometimes to ride.

## Public paths

- The guillotine, by which rights on historic, unrecorded paths are extinguished on 1 January 2031, to be repealed.
- Public paths to be made fit for use, by a simple procedure involving exchange of notices between a member of the public and the highway authority, thus requiring a path to be maintained and unobstructed regardless of who has the responsibility to carry out the work.
- A rollback provision for paths alongside water, so they are not lost to erosion.
- Highways across airfields and other military land to be reinstated when the land is surrendered by the state.

## Open spaces

- A duty on local authorities to ensure that everyone can enjoy good-quality, well-maintained, safe open space within 300 metres of their homes.
- Local authorities, when disposing of open space, to provide suitable exchange land.

## New access

- Greater public access rights to woodland, forestry, watersides, and on water, by extension of the Countryside and Rights of Way Act 2000, using a mechanism akin to the England Coast Path, or public-path creation orders.
- Permanent new access rights to be funded by central government where they are needed.

*This is work in progress. Let us know your thoughts.*



## Free to fell

A turbary allotment near Obley, in south-west Shropshire, was registered as common land (CL68). Next to it is a recreational allotment, registered as village green (VG13). Both were awarded under the Clunbury (Obley Township) Inclosure Award of 1854.

Both are located some 150 steep metres above Obley itself, on Black Hill, afforested by the Forestry Commission. And both, lacking engagement from villagers digging peat or seeking recreational opportunities, have become subject to natural tree-growth (although not planted by the commission).

The Shropshire Hills Area of Outstanding Natural Beauty sought permission, on behalf of the parish council, from the commission to fell some of the trees as part of a community-led heathland-restoration project. It was surprised to be told that any felling licence would attract conditions to require replanting, and it sought our advice.

We said that no licence was required for felling on the recreational allotment



*Looking north-east across the parish land at Obley, the rectangle at the right of the track. Photo: © Bob Kemp, July 2022.*

under section 9(2)(b) of the Forestry Act 1967, as none is needed for ‘the felling of ... trees standing or growing on land comprised in a ... public open space’. The commission agreed with us.

## Blackbushe airport beaten

After a seven-year saga, Blackbushe aerodrome is to stay as part of Yateley Common. That is the final pronouncement of an inspector who has determined the application of Blackbushe Airport Ltd (BAL), made in November 2016. This



*Blackbushe aerodrome, not deregistered. Photo: Hugh Craddock.*

was to remove nearly half a square kilometre of airfield from the Hampshire register of common land, on the incorrect grounds that the common was part of the curtilage of the terminal building.

Inspector Mark Yates has granted BAL’s application only in relation to the aerodrome terminal building and café. The two buildings together occupy around 500m<sup>2</sup>—just 0.1 per cent of what was sought to be deregistered in 2016.

In 2019 Hampshire County Council challenged the inspector’s decision to allow deregistration of the whole area, and as interveners we supported the council in the high court and court of appeal. The council won, the matter reverted to the inspector and has now

been satisfactorily resolved.

This case has been important in determining that ‘curtilage’ has a limited definition. (*COM/3206697R*, 10 November 2023)

## Gating of Primrose Hill Park

At the request of members, we objected to the Royal Parks’ planning application for nine gates around the edge of Primrose Hill Park in Camden, London; these will restrict people’s access to this important recreational space.

We understand that it is the Royal Parks’ intention that the gates should be locked on Friday, Saturday, and Sunday nights, from March to October, ie during British summer time.

This is an important open space, in the heart of a residential area, and is much enjoyed by local people and visitors.

## Ancient Knighton Heath

In 1957, parts of Winfrith and Knighton Heaths in Dorset were compulsorily acquired by the government for use as an atomic-energy establishment. One third of a hectare of Knighton Heath, south of Gibraltar Cottage and not required for the project, was registered as common land under the Commons Registration Act 1965. In June 2022, the owner of most of

### Legal-action fund

Thanks to your generosity, we have so far raised an astonishing £34,000 for legal action. A brilliant outcome of our current appeal.

this land applied to Dorset Council to deregister it, under section 19(2)(a) of the Commons Act 2006. The society objected.

The applicant argued that the registration arose from a mistake: that as all rights of common were extinguished by the Winfrith Heath Act 1957, the land could not remain, nor be eligible to be registered as, common land. However, he



*Knighton Heath, Dorset, to the left of the lane. Photo: Nicola Harper.*

was required to show that a mistake was made by Dorset County Council (as it then was) *itself*—and this he could not do.

The society pointed out that the council did what it was required to do under the 1965 act. This was not to decide the merits of what was sought to be registered—that would be decided by a commons commissioner if there were any objections (and there was none).

Dorset Council accepted the recommendation of officers that the application be rejected.

However, the owner has erected a fence between most of the land and the public footpath, which lacks the required consent for works on common land, and which harms the openness of this remnant of a once-great heath. We have called on the owner to remove the fence, and the council to take action in default.

## Kilvey Hill threatened

We have objected strongly to a planning application from Swansea Skyline to convert Kilvey Hill, in north-east Swansea, into a massive tourism site. We have also objected to the council’s application to dispose of the open space here.

The proposed development would comprise, among other infrastructure, gondola stations, a multi-purpose visitor building, luge tracks, chairlift, sky swing,



*One of many unrecorded routes on Kilvey Hill, Swansea. Photo: Amanda Leighton.*

zipline, and ancillary buildings.

Kilvey Hill is a special, tranquil place, loved by local people and visitors, with extensive views over Swansea Bay,

We are astonished that the applicant claims that 'existing rights of way will be retained without the need for diversion of routes' when there are many unrecorded paths over the hill. Swansea, as a former borough council, was exempt from the requirement to create a definitive map until 1983.

The gaps in the network particularly affect horse-riders and carriage-drivers, as bridleways and restricted byways have been omitted. Residents have been trying without success to get Swansea Council to record these routes.

The freedom to roam on much of the hill which is mapped public-access land will also be lost.

### **Commercial exploitation**

Planning inspector Rory Cridland has permitted a controversial Festival Republic event to take place this August on Clapham Common, despite objections from the society and hundreds of residents. Lambeth Council applied for consent under article 12 of the Greater London Parks and Open Spaces Order 1967. A ten-day public inquiry was held last June where we were represented by our local correspondent, Jeremy Clyne.

We objected to the damage which would be caused, the loss of public access, noise, and anti-social behaviour during the event, and the inevitably long period afterwards, when the land has to be cordoned off in an attempt to allow it to recover.

Despite clear evidence to the inquiry of the effect of previous extended closures, the inspector, Rory Cridland, judged that that 'any additional restrictions are likely to be of short duration' and that the events 'would provide cultural and social engagement opportunities for different public audiences'.

We fear it will give a green light to



*Clapham Common after a music festival. Photo: Jeremy Clyne.*

councils for further destructive, income-generating development on commons. (COM/3312935, 5 October 2023)

### **Sneedhams Green saved**

Consent has been refused for works on Sneedhams Green common, south of Matson and close to the M5 in Gloucestershire.

Black Box Planning Ltd had applied, on behalf of the G W Hughes Will Trust (the landowner), to the Planning Inspectorate for approval to construct three access ways across the common, to serve a proposed development of 190 dwellings.

We argued that the application should have been made under section 16 of the Commons Act 2006 with exchange land

provided for that to be lost. The roads would interfere with grazing rights on the common, by creating three new breaches through which sheep could escape.

The inspector, Paul Freer, agreed that 'these urbanising features would be harmful to this semi-natural landscape' having 'a significant and lasting impact'. The applicant had not 'provided a convincing explanation as why a section 16 application could not be made in collaboration with the owner of the land'. He therefore refused the application.

The development will be delayed by at least a year, but the developer could have avoided this with proper consultation.

Chas Townley, our local correspondent, said: 'Sneedhams Green is the last remaining common with graziers' rights still being exercised within Gloucester City. This significant decision demonstrates the importance of providing replacement land for common land lost through development proposals.' (COM/3307244, 18 December 2023)



*The site of two of the proposed access ways on Sneedhams Green, Gloucester. Photo: Chas Townley.*

## 75<sup>th</sup> anniversary

This year is the 75<sup>th</sup> anniversary of the National Parks and Access to the Countryside Act 1949, which gave us national parks, areas of outstanding natural beauty (now known as national landscapes), national nature reserves, definitive maps of rights of way, long-distance paths (national trails), and more.



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

It was therefore particularly good news that the feisty Campaign for National Parks (CNP) should, at the end of last year, win amendments to the Levelling-Up and Regeneration Bill in the house of lords. These place a duty on all public bodies to *further the purposes* of English protected landscapes rather than merely *to have regard* to them. There is also an enabling clause for the environment secretary to publish regulations to strengthen management plans, with targets for biodiversity and climate.

These law changes are long overdue and we congratulate CNP on achieving them.

## Mayoral manifesto

With the election for the London mayor on 2 May, we have been working with 18 other organisations comprising A More Natural Capital coalition to prepare a pro-environment manifesto (see our website <https://shorturl.at/ck145>).

We are delighted that it includes support for our Open Spaces Charter and our call for voluntary registration of greens.

We urge our London members to press these points with the candidates, and to ask for their commitment to protect and promote open spaces and paths.

## **Hanover Green Road saved** **We have helped to save a useful green road which was threatened with closure by Gloucestershire County Council in the magistrates' court.**

The 215-metre-long route, Hanover Green Road, is in the parish of Redmarley d'Abitot and runs south-west from the A417, just south of the M50 crossing, at NGR SO759324.

The council applied to the magistrates' court to extinguish the public rights here, under section 116 of the Highways Act 1980 (the mechanism for stopping up or diverting routes with vehicular rights). The road was (and still is) obstructed by a hedge, wire fence, and various wooden fences; there is a steep bank where it adjoins the A417 at its northern end, and it is partially obstructed by a barn. It is also heavily overgrown.

Rather than carry out its duty to remove the obstructions, Gloucestershire County Council applied to extinguish the rights at

the request of the landowner who was responsible for blocking the route.

We opposed the application with the Ramblers and the Trail Riders' Fellowship and jointly instructed lawyers to argue our case in court, where we were represented by our local correspondent, Gerry Stewart. Other local users also appeared.

Cheltenham magistrates found the track to be necessary for the public to use, particularly on foot and by motorcycle. They therefore could not extinguish the route because the statutory criterion for closure was not met.

In finding that the route was necessary, Cheltenham magistrates accepted it was being used by the public, and would be used more if the unlawful obstructions were cleared.

Says Gerry Stewart: 'I first heard in 2018 from local people of the application to close this road. It was irrational of the



*Obstructions on Hanover Green Road. Photo: Trail Riders' Fellowship.*



*Left: The south-west end of Mundesley, Norfolk, restricted byway, looking north-east. Right: the north-east end. Photos: Ian Witham.*

highway authority not to have early discussions with the user groups, and it has cost it dear’.

We are grateful to Chloe Karamian, Heidi Copland, and Jack Boyle of DMH Stallard LLP, and Giles Atkinson and Noemi Byrd of 6 Pump Court Chambers.

### **Restricted byway win**

Our local correspondent, Ian Witham, applied to upgrade a public footpath at Mundesley, 12 kilometres south-east of Cromer in Norfolk, to a restricted byway.

The 60-metre path (*pictured above*) runs roughly south-west to north-east, between the C634 Cromer Road (NGR TG311368) to the clifftop (TG311369). The route was once part of the main coastal road but, with the erosion of the cliffs, has ceased to be used as such.

Ian’s historical research showed that the route was an old road and should now be recorded as a restricted byway. Norfolk County Council confirmed the unopposed modification order. The route is however overgrown, and Ian is pressing the county council to clear it.

### **The cut-off commenced**

In March 2023 the then environment secretary, Thérèse Coffey, made a pernicious u-turn. A year earlier, environment minister Richard Benyon had decided not to implement the 2026 cut-off for historic path-claims. Dr Coffey instead said that she would start it, while

setting it back five years to 2031 (os summer 2023 page 13).

Dr Coffey knew that the stakeholder working group on rights of way (SWG) was advising officials on the regulations for the exceptions to the cut-off, such as for paths in use and those in urban areas. However, she decided, at five days’ notice, to bring the legislation into force on 25 October without waiting for the regulations for exceptions to appear.

We have always argued that the cut-off and the exceptions should be started together, otherwise there is a risk that the exceptions will never be put in place. The SWG’s consensus was a package to be implemented as a whole, not for picking apart.

### **Secondary legislation**

On the day the cut-off was started, the draft regulations were laid before parliament to substitute the year 2031 for 2026, to take effect 21 days later (on 17 November) if not annulled.

Meanwhile the draft regulations were studied by the house of lords secondary legislation scrutiny committee (SLSC) which produced a report for the house.

In the explanatory memorandum (EM) to the draft regulations, the government alleged that there would be no, or no significant, impact on business, charities, voluntary bodies, or the public sector from the regulations. We disagreed, and



*Our case officer Hugh Craddock rides along Jouldings Lane near Farley Hill in Hampshire which, thanks to his application, was recorded as a restricted byway in 2022. Photo: Liz Greenwood.*

we wrote to the SLSC to say so.

The SLSC, in its report, said: 'We accept that a formal impact assessment was not required for these regulations, but we take the view that it would have been helpful to explain the current backlog of applications in the EM. While the planned rights-of-way reform may streamline the application and determination process, many local authorities are nevertheless likely to receive a significant number of new applications, adding to the existing backlog and to current resource pressures. *The house may wish to raise the resourcing issue with the Minister.*'

### Debate

On 27 November there was a debate in the house of lords about rights of way. Baroness Hayman of Ullock (Labour), and Lord Hodgson of Aston Abbotts (Conservative) had tabled motions of regret about the regulations to extend the cut-off. While they did not regret the extension, they rightly wanted an opportunity to air concerns about the process and the guillotine. In our briefing to peers, made jointly with other user-group members of the SWG, we drew attention to the SLSC's question about resourcing, and some peers raised this. No satisfactory answer was forthcoming.

### ELMS access

A welcome u-turn from Defra came in early January when the new environment secretary, Stephen Barclay, announced that the government will pay for new public access as part of the environmental land management scheme (ELMS). Thérèse Coffey had refused to do this.

The scheme includes new open access-land and routes, and upgrading of routes, all permissive and for five years maximum. There is nothing published yet about how this will be overseen, to ensure that access is provided where people want it, and that farmers who abuse their paths will not get paid. We await further news.

Meanwhile, with six other recreation organisations, we have written to the environment secretary to welcome the announcement and to request an option of paid-for permanent access. This gives certainty to users, is shown on Ordnance Survey maps, and provides much better value for public money.

### Whither Wales?

The consultation about the sustainable farming scheme in Wales, following the Agriculture (Wales) Act 2023, proposes payments for public access, although again with no detail. We shall call for such payments to bring genuine public benefit, with permanent access an option.



*Permissive access sign near Bere Ferris in Devon. Signs like this happen when the payments stop; permanent access is far preferable.*





**Inclosure 1845-1865 of Nottingham's Fields** by June Perry, Junebooks (ie self-published); £15. Order from Five Leaves Bookshop, 14a Long Row, Nottingham NG1 2DH ([www.fiveleavesbookshop.co.uk](http://www.fiveleavesbookshop.co.uk)). Softback 677 pages, 36 illustrations (mostly in colour) and three maps.

W E Tate, to whose penetrating work on the enclosure movements local historians and defenders of public rights are indebted, complained of the lack of records kept by enclosure commissioners: in the great majority of cases the researcher can obtain no insight into their working methods. June Perry boldly claims on the cover of her book to supply 'all the details Tate was looking for' and to do this in her account of the inclosure of St Mary's parish, Nottingham. However, this inclosure was quite atypical in that it was undertaken to enable civic expansion rather than to satisfy the greed of rural landowners. Perry herself acknowledges this, but nonetheless recounts in meticulous detail the work of the St Mary's commissioners.

## Overcrowded

In the mid-19 Nottingham was grossly overcrowded, stifled by the surrounding open fields and meadows on which building was more or less impossible; the Nottingham Inclosure Act 1845 was designed to loosen these bonds. Perry tells how this was achieved, drawing on the minutes of the meetings and decisions of the commissioners, the records of which have been preserved. That this took a couple of decades was not owing to sloth on the part of the commissioners; indeed Perry stresses

how hard they and their clerk, the indefatigable and polite solicitor Edwin Patchitt, worked, but to the size of the area concerned and the number (more than 550) of persons who presented claims for compensation and improvements (roads, sewers, paths, etc) all of which had to be assessed and in many cases argued over.

Here then is a mass of information about hundreds of people involved in the inclosure; it will be of immense value to local historians. Unfortunately the book



*Nottingham Forest, held for the people of Nottingham when the land was enclosed under the 1845 inclosure act.*

suffers from serious defects. There is no index which makes it nearly impossible to trace any individual through more than 600 pages. The maps are almost useless—those dated 1801 and c1840 being largely illegible. The glossary of technical and obsolete terms falls badly short: what for instance are *tenters*, *rammells*, and *stanks*? Information about individual players in the story is sparse and often missing altogether.

But note this: Perry emphasises an



*The view north from Cornakey Cliff, near Marsland Mouth on the Cornwall-Devon boundary. Photo: Christopher Goddard.*

outstanding provision of the Nottingham award, namely that 130 acres of the newly-freed land should be available to the people of the city for their enjoyment and recreation 'for ever'. This land is still for the most part available today as a variety of walks and parks, the arboretum, and two cemeteries in which charm outweighs loss. Despite that 'for ever', it is necessary to defend such rare amenities against developers and municipal vandals, and in these contests June Perry has played a resolute part, for which our thanks.

**Chris Hall**

### Local correspondents

We have appointed four new local correspondents: Jon Brierley for Malvern Hills District, Worcestershire; Mick Freer for Dudley Metropolitan Borough; Richard Price for west Ceredigion, and Ashley Redsell for Spelthorne Borough, Surrey (commons). We are delighted to have them on board.

We are sad that Helen Slade has retired as our correspondent for the Isle of Wight, and Nicholas Whitsun-Jones for West Dorset. Both have achieved a great deal for us, and we shall miss them.

**The England Coast path, book 2: the south west coast** by Christopher Goddard (Gritstone Publishing, £15.99).

This is the second of four planned guidebooks to the England Coast Path (ECP). The route works its way westward from the River Exe, round Land's End, and on to the Severn bridge at Aust, a total of 988 kilometres.

The walk, providing a variety of coastal landscapes and habitats, follows the ECP with its adjoining access land for most of the way, but where the ECP is not yet open it uses the best available route. Much of the ECP coincides with the South West Coast Path national trail, but with improvements and alternatives.

The book breaks the route into walking days of between 11 and 16 miles, with information about parking at either end of each day's walk, public transport, and accommodation to facilitate a linear journey.

This chunky little book is great for planning the walk and to have in your pocket as you go, since it gives plenty of useful and entertaining information along the way. There is also a 'song of the day' suggested for each section of the walk.

**Kate Ashbrook**

## **David Allard, 1933-2023**

**Our long-standing, loyal member David Allard has died aged 90.**

David moved to Royston in Hertfordshire in the late 1960s, to work for the Midland Bank, and lived there for the rest of his life. A bachelor, he took an active interest in his community, serving as a trustee of the Royston Community Association for 50 years.

David joined the Ramblers at the age of 17, while working as a bank clerk. In 1983 he set up the Royston and District Ramblers' group, and in June last year celebrated the group's 40<sup>th</sup> anniversary by leading a walk on Therfield Heath.

He did sponsored walks to support other charities, particularly the Beds and Herts Historic Churches Trust for which he was the social secretary. He was the



*David near Chrishall in Essex, 2023.  
Photo: Mike Flexmore.*

Ramblers' Hertfordshire and North Middlesex Area secretary for 12 years and was a diligent footpath secretary for eight local parishes.

In 2020, when group walks were cancelled because of covid, David walked the 194-mile Hertfordshire Way, a route which he had helped to create in 1996. A non-driver, he used public transport to link the different stages. He completed the Pennine Way three times.

His busy life was dedicated to

encouraging people to walk for their health and pleasure. At the age of 90 he continued with enthusiasm and energy to lead walks for Royston Ramblers.

He was a member of our society for 33 years, and he helped us with issues on his local Therfield Heath common.

David died while out walking, his favourite pastime. From the many charities which he supported, his siblings kindly chose the society as one of those to benefit from donations at his funeral.

## **Alan Haworth, 1948-2023**

**Our friend Alan (Lord Haworth of Fisherfield) died unexpectedly last August. He was 75**

Alan was appointed a Labour peer in 2004. Previously he was secretary of the Parliamentary Labour Party for 12 years and was instrumental in securing the Labour victory in 1997.

A walker and climber, he was at home in the Scottish hills. He completed the Munros on 28 September 2001, exactly a century after the first 'compleator', the Reverend A E Robertson.

Alan was always ready to speak for us in the lords and move amendments to legislation; he rapidly assimilated complex issues and was dogged in his pursuit of the truth and justice.

He led a colourful and intrepid walking group, the Radical Ramblers.



*Alan on Beinn Dàmh, Torridon, in 2009.*

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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