

# Open Space

Summer 2024

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 Open  
Spaces  
Society

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Campaigning since  
**1865**

# Open Space

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## Cover story

Three hundred people rallied on the top of Kilvey Hill, east Swansea, on 24 March to protest against the proposed tourist development there which will destroy much of the hillside. Leading the way are Richard ('Blod') Williams providing the music and his horse Maccsen providing the charm (*see page 5*).



## Forty years on

**When I joined the Open Spaces Society as its general secretary 40 years ago, our world was very different.**

We had no right to walk on all commons in England and Wales. Lost commons could not be registered. New village greens were unknown. Consent was not needed for works on commons with no registered rights. Paths were in a far worse state. All this is much better now.

Campaigning was different too. Press releases took time, they had to be photocopied and stapled, envelopes had to be addressed by hand, stuffed, stamped, and posted. Events could not easily be arranged at short notice. Now it all happens instantly, and 24-hour news makes it hard to plan a story for a particular moment.

### Prevented

When I look back on 40 years (and indeed the whole 159 years of our existence) most of the society's victories are the things which we prevented: paths *not* diverted, commons *not* fenced, open spaces *not* developed—nothing to see, but extremely satisfying.

From the new government we want changes which bring new public benefits. And we must eliminate the inequalities in access; it is vital to provide access close to home. A mechanism to ensure that new greens are registered more readily, by encouraging voluntary registration by landowners, and mandatory registration by developers, will provide new spaces with guaranteed protection.

Local authorities, when disposing of open space, must be compelled to provide suitable land in exchange, serving the same community. An example is Kilvey Hill, Swansea, where the council proposes to dispose of open space, on many people's doorsteps, to a crude tourist-development (*see page 5*).

The Environmental Land Management Scheme in England, and the Sustainable Farming Scheme in Wales, offer to pay farmers and land managers for new and improved access. It is taking an inordinate amount of time for this to happen—but these schemes should help to give access where people need it.

### Distance

The national trails, the 75<sup>th</sup> anniversary of which we celebrate this year, are largely some distance from where people live. However, one of the new national trails, the England Coast Path, will provide access for coastal-town dwellers.

There are problems though: English Heritage is set to stop the path from following the foreshore at Osborne on the Isle of Wight, forcing walkers alongside a busy road. This is depressing for the people of neighbouring East Cowes, who have little access, and for visitors (*see page 14*).

Forty years on there is still plenty to campaign for. We have always been ready to take legal action where needed and shall raise our game to get results, while remaining nimble, feisty, and fearless in defence of our rights. **KJA**

# Look, no fences

Ian Ryding, warden of RSPB Geltsdale, reports on the use of Nofence technology to manage cattle and sheep.

**Geltsdale is a large RSPB nature reserve in Westmorland and Furness (formerly part of Cumbria), in the north Pennines. It comprises two upland farms, Geltsdale and Tarnhouse, each over 2,000 hectares. Much of it is access land under the Countryside and Rights of Way Act 2000 (but it is not common land).**

Extensive grazing, mostly by cattle, occurs across much of the site and a Nofence invisible-fence system has been used in some areas to manage the herd without the need for conventional stock fencing. Now we are trying it for sheep.

## Purchased

Recently the RSPB has purchased a Nofence system to trial on a small flock of sheep. Twenty-two Herdwicks have been grazing a ten-hectare Nofence enclosure set within a larger 91-hectare parcel since the beginning of February. The area is part dominated by soft rush, which has been topped to make it more appealing to ground-nesting birds such as lapwings and curlew. The sheep will happily nibble any new rush-growth and cover the area with dung, which attracts the invertebrates the birds like to eat.

Each sheep wears a collar which emits a



Collared Herdwicks. Photo: Ian Ryding.

warning sound when the animal approaches the virtual boundary. This is usually enough to deter the ewe and encourage her to turn around. If the ewe continues beyond the boundary line, the collar will deliver a small electric shock to the neck. We were surprised how soon the Herdwicks learn that the sound means to change course.

There were a few initial teething problems with a couple of the ewes breaking free to get back to their year-old lambs in a nearby field. This involved escaping the Nofence and jumping the stone wall, so nothing would hold them back. Herdwicks are notorious Houdinis and certain individuals have a complete disregard for field boundaries. Once the lambs were moved to a field out of sight, we experienced few escapes. The sheep are getting accustomed to their Nofence pasture and have stayed within the boundary. It appears to be better than a stone wall.

## Pulses

Over a week in late March the flock of 22 sheep received 447 audio warnings and 62 pulses, that is under one pulse per day per ewe. Once the lapwings and curlews start to nest, the sheep are moved to another area to leave the birds undisturbed.

The collars have been bought by the North Pennines National Landscape's Fellfoot Forward Landscape Partnership Scheme, funded by The National Lottery Heritage Fund.

*While the ideal is shepherding and hefting of sheep, this technology helps to avoid fencing of commons—editor.* □



## Green title

**David Thornewell, our local correspondent for Tonbridge and Malling Borough in Kent, tells how his parish council registered title to the village green—**

In 1968 East Malling and Larkfield Parish Council registered the open space in East Malling village as a green under the Commons Registration Act 1965. The council had no title documents and so did not claim ownership.

Being undisputed, the registration became final on 1 August 1972. Then, because there was no registered owner, it was referred to the commons commissioner under section 8 of the 1965 act. By that provision, as it was in a rural area, the commissioner vested the land in the parish council.

## Vesting

In 1969 I was elected to the parish council. I later discovered to my surprise that this vesting did not mean that ownership was registered at the Land Registry. I did not pursue it then, but in early 2020, when I was chairman of the parish council, I asked the council if our solicitors could seek land registration.

I provided a statutory declaration setting out that, from my knowledge, since 1969 the parish council had cut the grass, and maintained seats, the bus shelter, and war memorial on the green.

I declared that no one had challenged the parish council's ownership, and the council regarded itself as the rightful owner. We produced copies of the 1965 act entries held by Kent County Council, and invoices for replacement of seats.

After some delay, the Land Registry notified registered landowners around the site to see if any objected. One queried whether the pavement in front of the green was being claimed, which we confirmed it was not. Eventually we heard from our solicitors that possessory title had been granted, because we could



*The village green.*

not produce written title documents. However, after 12 years, we can apply for absolute title by filling in a form.

This involved some work and legal costs, but it shows those parishes in a similar position that they should be able to get their title to village greens registered at the Land Registry.

## Whitehall Road rec

A much-loved open space at Whitehall Road in Blackburn has been designated as Local Green Space (LGS) in the Blackburn with Darwen local plan, adopted on 25 January 2024. Our member, Vicki Harris, reports—

The local green space was the result of a five-year campaign by residents to protect the small recreation field from

development. With the advice of the Open Spaces Society, we secured the land's status as an Asset of Community Value in 2020. The LGS application provided references to the relevant National Planning Policy Framework (NPPF) criteria and the community support that the group had obtained, with evidence of regular and varied use of the green space by nearby residents.

The local plan states: 'Through the Local Plan preparation, two sites were put forward as being demonstrably special to the local community and which met the criteria for a LGS set out in national policy. ... Designating these sites as LGSS through the Local Plan provide (*sic*) protection consistent with that in respect of Green Belt as set out within the NPPF and Policy CP2: The Spatial Approach'.

This site is important for children's play, dog walking, and other informal recreation. Now it will be protected.

### One Tree Hill safe

We are celebrating the decision by Surrey County Council to register One Tree Hill at Long Ditton as a village green, thereby protecting it for ever. The land comprises about 10 hectares of mixed woodland, open grassland, and scrub intersected by numerous paths.

About seven years ago, Elmbridge Borough Council's green-belt consultants, Ove Arup and Partners, had identified the adjoining Stokes Field (owned by the council), and One Tree Hill (owned by developers Taylor Wimpey) as 'lesser-performing green belt' at risk of development. With advice from the society, concerned residents applied in August 2017 to register both areas as village greens, having used them for decades.

Elmbridge Council opposed the Stokes Field application. Foreseeing legal difficulties our local correspondent



*One Tree Hill village green.*

Rodney Whittaker, supported by borough councillors, began a campaign for the council to register the land voluntarily. This was eventually agreed by Elmbridge Council in April 2023 (*os* summer 2023 page 6). However, Taylor Wimpey was not prepared to register One Tree Hill voluntarily and so it was necessary for residents to gather evidence of use, without permission or challenge, for a period of 20 years.

There were three objectors, including Taylor Wimpey, to the application, so Surrey County Council, as the commons registration authority, held a public inquiry in April 2023.

### Demonstrably

There the applicants called 25 local witnesses including Rodney Whittaker. The inspector (barrister Stephen Morgan of Landmark Chambers) recommended registration of the whole area excluding only two parts voluntarily withdrawn by the applicants. This was confirmed by Surrey County Council's planning and regulatory committee on 24 April 2024.

Says Rodney: 'We are delighted at the outcome of the public inquiry. Together with the adjacent Stokes Field, this now provides an open area of nearly 20 hectares secured for use by local people. No less than 57 per cent of Elmbridge's land area comprises registered commons and other open, accessible spaces. These are all well-used and much valued by the borough's residents.'

# Don't kill Kilvey Hill

With our support, local people are fighting Skyline Swansea's proposed development on Kilvey Hill.

**'Don't kill Kilvey Hill' was our message to Swansea Council at a rally organised by local people in March. Our general secretary Kate Ashbrook joined a crowd of more than 300 on top of Kilvey Hill, north-east of Swansea, at a protest against plans by Skyline Swansea Ltd for a vast tourist development there. This includes a restaurant, visitor centre, 50-metre-high 'skyswing', cable cars, 1.6 kilometres of high-speed luge runs, and a zip wire.**

## Doorstep

The turnout demonstrated how much local people love the hill, a tranquil green space on Swansea's doorstep. Here one can absorb nature and enjoy the expansive view over Swansea Bay. The woods are full of birdsong, and people roam freely over this hillside. Skyline's development will destroy all this.

The hill is criss-crossed by public paths, but many are unrecorded or under-recorded. For instance, a number of footpaths are in fact bridleways or restricted byways, as there is a long tradition of riding, cycling, and carriage-driving here.

At the time of writing Swansea Council has yet to determine the planning application. Its cabinet did however approve 'in principle' its proposal to dispose of open space here, despite 265 objections and only two representations in



*The view south-west from Kilvey Hill, across Swansea Bay to Mumbles.*

support. The society argued that, in accordance with its own rules, Swansea must demonstrate that the open space is surplus—and we do not see how it can be when much of it is mapped as access land, and is so vital to local people for their health and happiness. However, cabinet members appeared not to share our view.

We are discussing with local people what our options are for fighting this. □



*Local people demonstrate their love for Kilvey Hill at the March rally.*



## New Forest shenanigans

**Section 41 of the Commons Act 2006 enables enforcement action against unlawful works on common land. Proof to a court that the land is common usually just requires evidence that the land is registered as such.**

The New Forest in Hampshire was excluded from registration under the Commons Registration Act 1965, on the basis that registration had already been (partially) addressed under the New Forest Acts.

### Encroachment

Recent legal proceedings against an encroachment in the New Forest have shown how much harder it is to adduce proof where the local registers do not record the extent of common land, but only identify those who are entitled to exercise rights. Whereas there is some reasonable certainty about the crown lands in the New Forest subject to rights of common, there is far less documentary evidence about the extent of the non-crown manorial commons.

At Shobley Bottom, just east of Ringwood



*Shobley Common with the unlawful fence and gate. Photo: Diana Westerhoff.*

and north of the A31, an ancient bank divides the parish of (now) Ellingham, Harbridge and Ibsley from that of Ringwood. The land south-west of the bank has been open to commoning since time immemorial. It is designated as part of the New Forest site of special scientific interest, and a special area of conservation, special protection area, and Ramsar site.

Part of this area, at Forest Oaks, was in 2019 enclosed from the rest of the common, and a considerable number of ponies, attracted by supplementary feeding, caused the land outside the enclosure to become poached. Despite the designation, Natural England was slow to act.

### Proceedings

The New Forest Commoners' Defence Association, with financial support from the New Forest Verderers, Friends of the New Forest, and the society, brought proceedings in the county court against the owner of Forest Oaks to secure the removal of the fence.

These were robustly defended, with questions arising as to whether:

- the land was subject to rights of common;
- the land was excluded from registration under the 1965 act, and whether that question was required to be referred to the minister for determination under section 11(5);
- the claimants, who asserted the exercise of rights of common over the land, were exercising only entitlement to vicinage (a tolerance for livestock straying onto neighbouring manorial waste);



- if the claimants asserted vicinage, section 30 of the Commons Act 1876 (a remedy alternative to section 41 of the 2006 act) was denied to them;
- the land was previously so covered in scrub as to be incapable of grazing;
- rights of common could be acquired by prescription.

When the matter came to trial, the judge—apparently alarmed at the cost estimates submitted by both parties (which were each into six figures) and regarding the matter effectively as a land dispute—ordered the parties to try to resolve the matter through mediation.

In the event, the defendant, now also under pressure from Natural England to act, offered to remove the fence subject to no admission of unlawfulness or costs. This has now been done. The society has contributed around one-quarter of the association's costs of about £30,000.

### Comment

It is unsatisfactory that such significant costs were incurred, without recovery, by the association and its supporters in legal action which had no immediate impact—and indeed, that costs could have risen much further. The New Forest commons are locked in a common-law time warp, which has been largely overtaken by registration elsewhere in England and Wales and is conclusive about whether land is common land.

It remains necessary in the New Forest, before taking action, to prove that land is common subject to rights: this can be done by evidence given by commoners of their own practice, and that of previous generations known to them.

But the uncertainty makes it difficult to address relatively trivial encroachments such as the extension of a boundary fence a few metres onto the common, owing to the need to prove the original boundary. While the New Forest registers provide

clarity as to who may exercise rights of common (though not so as to quantify those rights), they leave uncertain the precise boundaries of the manorial commons.

### Parking on the common

*Rushmer v Central Bedfordshire Council* [2023] EWHC 134 (Ch).

The Rushmers and their neighbours the Harrises live next to Studham Common in Central Bedfordshire. They had been in dispute with Central Bedfordshire District Council (the council) and parish council owing to parking on the common outside their homes.

There is no known owner of some of the land, but it is subject to a scheme made in 1911 under part I of the Commons Act 1899 for the regulation and management of common land, which appears to vest regulation in the council. It purports to have permitted parking on the land under the scheme.



*The gate and post were erected on Studham Common and subsequently removed. The court decided that the track was not part of the common because the 1899 act scheme no longer applied to it.*

The claimants brought an action against the council, to clarify the extent of the common and of the scheme.

Nicholas Thompsell, a solicitor sitting as deputy high court judge, decided that the court could make a declaration as to what document constituted the true register, noting that the council admitted that it

had lost many of its original commons-register documents and relied upon copies of uncertain provenance. But he rejected the claimants' case that the court had jurisdiction to clarify, still less correct, the register, observing that (leaving aside powers available to the court in cases of fraud), this function was reserved to the council under section 19(2)(a) of the Commons Act 2006.

In the event, the judge decided that a copy of the register map supplied by the society (and originally provided by Natural England from a scan done early

### **Dartmoor backpack-camping**

The Darwalls having been granted leave to appeal against the appeal court's judgment in favour of the Dartmoor National Park Authority, the case will be heard in the supreme court on 8 October 2024. We wait to hear if we can again intervene.

in the 2000s) was to be preferred over a non-compliant copy presented by the council, noting that the provenance was 'a reputable source'.

The judge then turned to interpretation of the scope of the 1911 scheme, which included land not registered as common. Adopting the 'always speaking' principle (ie that the construction of acts allows for changes that have occurred after enactment), he found that the scheme now applies only to the common which is registered as such.

### **Comment**

The judge's identification of the proper register (contrary to the council's opinion) was reached after a careful analysis of the competing candidates.

The judge's conclusion that, in effect, the land which is subject to a scheme must have the same boundary as the land which is registered as common is unsatisfactory. Section 38(5)(b)(ii) of the 2006 act expressly applies the secretary

of state's controls on works to scheme land whether it is registered or not, a provision which would be perverse if a scheme no longer applies to such land. Paragraph 2 of schedule 2 enables such land to be added to the register of common land (but that provision has not been brought into force in Bedfordshire).

### **Assiduous**

The then Bedfordshire County Council was particularly assiduous in seeking to exclude from its registers of common any land which was considered to be, or was even potentially, highway land. Such land, although not registered as common, may well remain eligible for regulation under the 1899 act. It is understood this was not addressed in submissions from either party.

It is not obvious why one should expect the extent of a scheme to be consistent with what is registered as common land, given that the registers are not comprehensive of what land is common land, and that the 2006 act continues to treat unregistered scheme land as meriting what the judge described as the 'highly restrictive set of provisions requiring special permission of the Secretary of State for many types of work on common land' (paragraph 17).

### **Binding**

Nevertheless, the judgment is binding on the parties in relation to the particular facts, and they will be able to rely on it.

The first part of the judgment is eminently reasonable, and we welcome it. It is worrying that the council has lost all its original register maps.

As to the second part, the claimants may have shot themselves in the foot, for the land subject to third-party parking is partly unregistered scheme land with no known owner, and the council was, under the scheme, the only body with statutory powers to regulate the use of that land. Now it no longer has those powers. □



## More commons

Our commons re-registration officer, Frances Kerner, has had considerable success with her applications to re-register lost commons.

Most of them are made under paragraph 4 of schedule 2 to the Commons Act 2006; this allows the registration of land (the provisional registration of which was cancelled under the Commons Registration Act 1965) on the grounds that it is waste land of a manor.

## Dartmoor wins

The Planning Inspectorate has granted the society's applications to register as common three parcels of rough grassland near Blackdown Common, Mary Tavy, in the Dartmoor National Park.

Two of the parcels are next to Willsworthy car park, and a third, known as Black Lion Common, is midway between the hamlets of Horndon and Zoar. These total 34.4 hectares.



*Black Lion Common. Photo: John Skinner.*

In 1968, along with other land, the three parcels were provisionally registered as common. Following objections, the provisional registrations relating to all three of them were cancelled with no

opportunity for public engagement. We were now able to demonstrate that the land is waste land of a manor, and our applications were granted.

## Wildhill Road

In May 2023 Hertfordshire County Council, the commons registration authority, granted the society's application to register as common about



*The land at Wildhill Road, looking west.*

1.8 hectares on the south side of Wildhill Road, near Hatfield.

The land, comprising a mixture of grass, shrubs, and trees, is just under six kilometres south-east of Hatfield House, the seat of the Marquess of Salisbury, Robert Gascoyne-Cecil. The land was provisionally registered as common in 1969 but, following an objection, the registration was cancelled. We applied under the 2006 act. The marquess objected but later withdrew and the registration was confirmed.

## Cornish coast

Cornwall Council has approved two applications to register common land on the north coast of Cornwall. One of these was made by the society and the other by

Tomas Hill who has a keen interest in commons.

Owned by the National Trust, the land extends to just over 170 hectares of grass and scrub, stretching from Newdowns Head around the coast to north of Porthowan beach, about two kilometres west of St Agnes.

In 1970, the Ramblers' Association applied to register the land as common. Following objections, the Ramblers agreed to cancel the provisional registration, but there was no opportunity for wider public engagement.



*Newly-registered common from just north of Porthowan. Photo: Landman LLP.*

The applications showed that the land remains waste land of a manor, so that it can be registered as common once again—this time for good.

## New trustees

Following advertisement and interviews, we have co-opted two trustees and welcome them to our board.

**James Lean** from Cambridge, an enthusiast for open spaces, has a career in banking and financial services with Barclays. As a regional director within the corporate bank, he has significant strategic experience with international blue-chip clients alongside national charities and housing associations.

**Andrew Packman** lives in Buck-

inghamshire. He was a partner in PricewaterhouseCoopers, retiring in 2023, and is a trustee of the London Handel Society. He is working for a master's in history in the Department of Continuing Education at Oxford University and is particularly interested in how the history of land use is reflected in current rights over common land.

## Montgomeryshire muddle

An application was made on 20 February 2023 to deregister 25 hectares of common land, MCL61, at Fawng Tynybryn, north-east of Capel Horeb in Powys. The application, under paragraph 7 of schedule 2 to the Commons Act 2006, was well supported with historical records to show that the land had never been subject to rights of common. However, it was muddled and we objected pending clarification.

It emerged that a farmer had sought to register rights of common over the township turbarry, which was immediately north of the application land, and identified as such on the title map. He submitted a plan which marked the wrong land as common, to the south of the turbarry. The then commons

### Our AGM

Come to our annual general meeting on Thursday 4 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 ([office1@oss.org.uk](mailto:office1@oss.org.uk)). Details are enclosed with this issue of *Open Space*.

registration authority (Montgomery County Council) acted on its own initiative (under section 4(2)(a) of the Commons Registration Act 1965) to register as a common not only the land (wrongly) identified in the application, but also additional adjoining land. Still



*The society's staff celebrate the general secretary's fortieth anniversary in post on Cobstone Hill—access land above Turville in the Buckinghamshire Chilterns.*

more oddly, the farmer's application was not noted in the land section of the register. No explanation exists for these actions on record.

We accepted that there was good evidence that none of this land is or was common land, and that it satisfied the tests in paragraph 7. Had the farmer correctly identified the turbary in his application, it might be argued that Montgomery County Council had made a mistake in registering the wrong land, which could now be rectified on an application for the purposes of section 19(2)(a) of the 2006 Commons Act.

However, in the circumstances, the society could see no way of achieving the correct registration. Powys County Council has granted the application.

## Outdoors for All

We are one of 47 national organisations which support the Outdoors for All manifesto for the next government, and were part of the group which drafted it. We presented it to parliamentarians at a reception in March at which the speakers included the environment secretary, Stephen Barclay, and shadow environment minister, Toby Perkins.

The manifesto is written in fairly general terms to ensure broad support and enable the organisations to develop the themes most relevant to them in their requests to

parliamentary candidates and new ministers. It calls for greater open-access rights; the repeal of the 2031 cut-off for historic paths; inclusion of public-access targets in the Environment Act 2021; access to be embedded in the Environmental Land Management Scheme—and much more.

This is the first time so many organisations have come together to argue for more public access, and it is a powerful message. You can read it at <https://rb.gy/v68nuy>.

## No go for green spaces?

Last year we submitted evidence to the House of Commons' Environment, Food and Rural Affairs Committee inquiry into the ecological, environmental, and human benefits of green space. The committee, in its recommendations, called on government to give green spaces much higher priority, and to provide leadership in encouraging more investment in them.

The government's response was disappointing. It offered no evidence of any progress on its promise to provide 'green or blue space' within 15-minutes' walk of people's homes by January 2028. Our proposal, that land should be registered as town or village green to facilitate this, has been ignored.

Another missed opportunity for our vital green spaces. □

## Cornwall capitulates

**Cornwall Council has capitulated in the face of court action, led by the British Horse Society (BHS), against the council's failure to register applications to add public paths to the definitive map as required by law. Section 53B of the Wildlife and Countryside Act 1981 directs the surveying authority to maintain a register of applications for definitive map modification orders.**

The BHS had applied in September 2023 for a path at Altarnun (11 kilometres west of Launceston) to be added to Cornwall's definitive map and statement as a public bridleway. The council refused to add this to its public register of applications until the applicant certified that it had given notice to the owners and occupiers of the land affected by the claim.

The BHS, supported by the society and Ramblers, lodged proceedings in the high court on the grounds that the council must register a duly-made application regardless of whether owners and occupiers have been notified.



*The claimed route. Google streetview.*

Under this threat the council backed down and agreed to register the application within one month. It has also confirmed that it will work through the BHS's 64 outstanding applications that it had refused to register, and will record relevant details within six months. It will pay £13,000 to the BHS towards its legal costs.

We are delighted at this result. It is essential that surveying authorities register properly-made applications within 28 days of receipt. There is a risk that paths identified in these may be extinguished in 2031 (when the definitive map is to be closed to claims for historic routes) because applications have not been properly registered.

## Ebridge Lane conundrum

Our local correspondent Ian Witham applied to Norfolk County Council in 2017 for a definitive map modification order in relation to 'Ebridge Lane' which connects Ebridge Mill and the start of Honing footpath 7. This lane continues as a footpath south across fields, past an old cross, to a bend on Corner Common Road.

The order was made in February 2020, consistent with Ian's application, to show Ebridge Lane as a restricted byway. Following objections, inspector Nigel Farthing issued an interim decision to modify the claimed route to a footpath. Notwithstanding further submissions, the inspector made a final decision to confirm the order with the proposed modifications (ie as a footpath).

The inspector sought to justify a refusal to confirm the order as made by concluding that the order way does not,



*Sign at northern end of Ebridge Lane.  
Photo: Ian Witham.*

for the public using vehicles, lead to any place of popular resort. The society asked Ross Crail, of counsel, to advise whether the decision could be challenged.

The inspector took the position, which counsel corroborates as supportable, that not only was there insufficient evidence of any through vehicular route, but the order was made on the basis that there was none. The inspector determined that the southern end of the order way was not a plausible place of popular resort, and that therefore the order way was unlikely to be a vehicular highway. In the inspector's view, the evidence in support of the order was insufficient to convince him of vehicular rights in the absence of an outlet for public vehicular traffic at the southern end.

### **Invidious**

That leaves the applicant in similar cases in an invidious position. One might perceive that a way is part of a through route but conclude that the evidence is insufficient to sustain a claim for the whole of that route. But if a claim is put forward for any part of that route, and the point of termination is not a relevant place of popular resort, there is a risk that the entire claim will fail, unless the supporting evidence is overwhelming.

In the society's view, the evidence was quite capable of supporting confirmation

of the order as a restricted byway notwithstanding. But with the question hanging over the appropriateness of the southern termination of the order way, a challenge to the inspector's refusal to confirm the order as made, on grounds of irrationality, would have been likely to fail. (ROW/3278506, 5 January 2024)

### **Opposing TTRO extensions**

Too often paths are 'temporarily' closed, rather than maintained, and then not reopened. Jointly with the British Horse Society and Ramblers we have published an information sheet on how to oppose the extension of a temporary traffic regulation order on a public right of way. You can find it at <https://rb.gy/eyf34s>.



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

### **Unlawful gates to go**

In October 2022 the British Horse Society served two notices on North Yorkshire Council, under section 130A of the Highways Act 1980, for the removal of two pairs of large, ornamental gates. These were obstructing either end of an 800-metre restricted byway in Stanwick St John, a small village about eight kilometres north-east of Richmond. Such gates not only block the way but are intimidating, making paths look private.

The case was listed for a two-day hearing in York magistrates' court in April 2024, but this was cancelled because the



*Left: gate at western end of restricted byway. Right: gate at eastern end. Both are unlawful and will be removed. Photos: Alan Kind.*

council accepted that the route was obstructed. The council has signed a consent order, endorsed by the magistrates, requiring it to take enforcement action if the gates have not been removed by 3 July 2024, and to pay a contribution of £8,326 towards the BHS's legal costs.

The society and the Ramblers agreed to join the BHS in the magistrates' court and to share the costs. This is an excellent result.

### **Unfit for a king**

We are supporting the Isle of Wight Ramblers in their campaign to secure the England Coast Path (ECP) on its proper course—along the coast. Unfortunately, English Heritage which, on behalf of the Crown Estate, manages Osborne on the

north-east coast of the island, opposes the route there. The likely alternative is the busy A3021 road between East Cowes and Wootton.

It is ironic that the path was renamed the King Charles III ECP last year, and that Osborne was given to the nation by the king's great-great-grandfather, Edward VII, in 1902.

English Heritage opposes the coastal route on grounds of 'security' because treasures are housed at Osborne—but they are a long way from the foreshore, so that argument does not wash. Natural England will publish its proposed route later this summer—but it is unlikely to have much view of the sea. We shall continue to campaign for a truly coastal path. □



*Left: the coast at Osborne where the path should run. Right: the likely alternative alongside the busy A3021. Photos: Mike Slater.*



# Reviews



**Lifescapes, The Experience of Landscape in Britain, 1870-1960** by Jeremy Burchardt (Cambridge University Press, 2023, £30).

This book, by the Associate Professor of Rural History at Reading University, is a most engaging read, offering a new approach to understanding the relationship between people and the rural landscape in which they lived. It is replete with detailed footnotes, a short but helpful bibliography, and delightful illustrations, examples of which are below.



*The South Downs from Fittleworth, West Sussex, by Katherine Spear Smith. © Hampshire Record Office, 19M99/1/3.*

Seeking to extract from historical sources the thoughts and feelings of past people, let alone in relation to the rural landscape, is not an easy task. While the life of a person can sometimes be traced, how can we elicit what he or she thought about their surroundings? Burchardt's method is to study diaries to determine how landscape was perceived, and what effect it had on a person's beliefs, motivations, and actions.

The period chosen is 1870-1960 during which, among other rural changes, the

preservation of commons and paths was accelerating. The comprehensive introduction which, in addition to charting what others have written about people's relationship with landscape, includes a useful discussion about the current and historical use of common words, eg countryside and landscape. The value of, and problems associated with, the role of diaries in historical research is covered as well as the methodology in selecting the eight diarists who feature in the study.

Deep analysis of the diaries, which occupies eight chapters of the book, places people into four groups. The 'adherers' are those who view the rural landscape as a stable place, free from change and offering continuity. The 'withdrawers' see the countryside as a place of retreat, while the 'restorers' consider it to be a place for personal regeneration. The 'explorers' see it as a place of self-discovery where they can enjoy the physical space. These groups,



*Udimore, near Rye in East Sussex, 1920, by Violet Dickinson. Reproduced with kind permission of the South West Heritage Trust. SHCA/AGV/24.*

as the author concludes and reflects after meticulous and exhaustive research, are only part of the story and we should be wary of compartmentalising people. As well as the characteristics that distinguish each group, there are many more influences in life that shape the character, views, and thoughts of a person.

This is a highly thought-provoking book. It challenges us not only to think more acutely about those in the past who lived and worked in the countryside, but also to reflect about our own relationship with the rural landscape. **Frances Kerner**

**Taking a walk, a history of recreational walking in Britain** by Ann Holt (White Horse Press, £70 but until 1 September only £25 for OSS members (email [sarah@whpress.co.uk](mailto:sarah@whpress.co.uk))).

This is a *magnum opus* of all aspects of recreational walking. Holt's aim is to explain the walking habits and views of ordinary people alongside the more famous, such as William Wordsworth. She refers to real and fictional experiences; both are revealing. For example, seasoned hiker Bert Hopkins, in Francis Brett Young's *Mr Lucton's Freedom*, tells us about rambling in the 1930s. Young was president of the Midland Ramblers' Federation, and Bert was 'a thinly-

disguised advertisement for the RA'.

We learn that author EM Forster wrote about his small wood which was 'intersected, blast it, by a public footpath', while Walter Scott found it tiresome to walk 'through some beautiful scene with a *minute philosopher* ... who is eternally calling your attention from the grand features of the natural scenery to look at grasses and chucky stones'. These nuggets lighten the read.

The book is well-referenced, though the plethora of footnoted quotations can feel a bit dense, as do the long paragraphs.

There are some infelicities such as spelling mistakes. The civil servant Evelyn Sharp, active during the passage of relevant legislation, is neither introduced nor indexed, merely referred to as 'Sharp'.

### Social movement

The book is in two parts. The first thematically covers the period up to 1914. Part two is about political struggles for access and paths, and the social movement, from the inter-war period to the present. The book ends with reflections on landowners' powers to exclude, and the continuing battles over simply taking a walk. The society's role in defending commons and paths is well recorded. **Kate Ashbrook**

### Finance and membership

We are sad that Lucie Henwood, our finance officer, is retiring after seven years with us.

Lucie has done invaluable work behind the scenes, providing the data to guide our financial decisions, and overseeing the membership records. She has brought colour to our office with her wide-ranging interests and sense of humour, alongside her calm ability to deal with whatever arises.

Regrettably our membership assistant Jane Abey has left us, and we have

reorganised the tasks. We have appointed Glynis Smith as our new finance officer, and our office assistant, Lucy McKean, has added membership to her role.

Glynis started her career in finance at the National Westminster bank in Henley. Later, with a young family, she became a company secretary and accountant for a financial advisor, and clerk for Rotherfield Peppard Parish Council. She was business manager at Gillotts School in Henley from 1996 to 2022 when she retired from full-time work to spend more time with her grandchildren.

## **John Lavery, 1953-2024**

**Our former trustee John Lavery has died aged 70.**

John became involved in the society after he retired from his post as a lawyer with the Department for Environment, Food and Rural Affairs (Defra).

He was one of our trustees from 2013 to 2019, and for a time our parliamentary agent, studying the private bills deposited each year and advising us on whether to petition. He also followed Bernard



Selwyn as our London representative, helping members with their cases. He assisted Long Live Southbank in saving the popular Undercroft for recreation including skateboarding in 2014, and Friends of Finsbury Park's (sadly unsuccessful) fight against the Wireless Festival there in 2017.

### **Humble**

John had a humble start in life; he grew up in Todmorden, Calderdale, the oldest of four children. His father died when he was about 14, and his mother had to go out to work; there was ice on the insides of the windows in winter. He went to Calder High School where he was on the chess team—he remained an excellent player throughout his life.

After studying law as a mature student in London he earned a frugal living from various jobs. He gained a law degree

and worked for private solicitors before landing a position with the Official Solicitor, and then moved to the Ministry of Agriculture, Fisheries and Food (MAFF) which became part of Defra. There he worked on issues of interest to the society, such as the Commons Bill in 2005–06, and he specialised in implementing difficult EU legislation.

### **Trawlers**

John told interesting stories from MAFF days about the cases he dealt with, many involving trawlers and illegal catches. On one occasion a trawler crew spotted that they were being followed by a fisheries protection vessel and dumped the catch over the side. John dealt with this by relying on the ancient principle of *omnia praesumuntur contra spoliatorem* (a presumption against the thief, in this case the destroyer of evidence).

With a great sense of humour, and a sharp intelligence, John was a member of a puzzle circle. He was keen on Apple computers, and on Brompton bicycles several of which he owned, and for which he recommended adaptations.



*The Undercroft, saved with John's help.  
Photo: Sam Ashley.*

John bore his final illness (cancer) and the many treatments and hospital stays with cheerful stoicism. He remained active to the end, always taking a deep interest in our work and offering his help and support should we need it.

We miss him.

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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