

Open Space

SPRING 2009 VOLUME 29 No 4



*** Rescuing lost commons * Barcroft Lane
in crown court * Planning Act victory**

Open Space

THE MAGAZINE OF THE
OPEN SPACES SOCIETY



Opinion	1
Taking action.....	2
Inclosure act thwarts fencing	3
Pioneering video	4
Far and wide	5
Case file	9
Path issues	11
Reviews	16

International Standard Serial Number (ISSN)
0265-8445

All rights reserved © Open Spaces Society

COVER STORY

Welsh Newton common in Herefordshire, where the commons register is being reopened (see page 2). The new video, Common Vision, in which the society plays a starring role (see page 4), helps people to understand the importance of lowland commons such as this. Photo: Sue Parkinson.

A people's charter?

'This is not just a bill. It is a people's charter ... for the open air, for the hikers and ramblers, for everyone who lives to get out into the open air and enjoy the countryside.'

Thus, famously, Lewis Silkin, Minister of Town and Country Planning, 60 years ago at the second reading debate on what became the National Parks and Access to the Countryside Act 1949.

While the 1949 act was a significant achievement at the time, it fell grievously short of expectations and, 60 years on, there is still much to do.

The act gave us national parks, national nature reserves, areas of outstanding beauty, access agreements and orders, definitive maps of rights of way and long-distance paths.

Wild country

National parks have made a massive contribution to protecting some of the finest wild country in England and Wales (Scotland has its own legislation). But parks are still threatened by quarrying, road schemes, military training and bad development (and would be much the poorer but for the efforts of the Campaign for National Parks and dedicated local defenders).

It is deplorable that in this anniversary year, ministers have

condemned the wild heart of the Dartmoor National Park to a further 21 years of military live-firing without even a review mid term (page 6). We trust government will do better in confirming the South Downs National Park (including the Western Weald) this summer.

Sixty years after we won official maps of public paths, some urban areas still lack them, so paths there are at risk from development. And 2026, the year when the maps will be closed to claims based on historical evidence, looms closer. We trust that Natural England's stakeholder group on rights of way, on which we are represented, will ensure that the maps are brought up to date, or that the deadline is revoked.

Feeble

The feeble provisions for access agreements and orders in the 1949 act were little used (outside the Peak District) and were eventually superseded by the Countryside and Rights of Way Act 2000; this gave only spotty access to heath and downland. The review of the maps, starting shortly, must reverse that situation.

The 1949 legislation for long-distance paths has been revived for the Marine and Coastal Access Bill, currently in the House of Lords, to create a trail around the whole of the English coast.

If the coastal-access legislation survives the parliamentary process and is properly implemented, it will keep alive the unrealised hopes of Silkin's charter.

KJA



Reclaiming lost commons

The Commons Act 2006 provides a new, time-limited, opportunity for you to rescue some of those English commons which failed to be registered under the Commons Registration Act 1965.

The benefit of registering these lost commons is that you will win access rights to them (on foot and possibly horseback) and that they cannot be developed without ministerial consent.

On 1 October 2008 the common registers were reopened in seven pilot areas. These are: Cornwall, Devon, Hertfordshire, Kent and Lancashire counties; Blackburn with Darwen borough, and Herefordshire district. Following the pilot schemes, the registers will then be reopened region by region, over a two-year period from October 2010.

Identify

In the pilot areas you should start now to identify those pieces of land which qualify for registration. The society is focusing on land which is waste of the manor, (section 22 and schedule 2 paragraph 4 of the Commons Act 2006). Legally, that is 'the open, uncultivated and unoccupied lands parcel of a manor'. That means the land must be undeveloped and unimproved—so you will need to inspect it. It must also be of manorial origin.

To explain why the land may now be eligible for registration, we need to recall

the initial registration process under the 1965 Commons Registration Act. That act defined commons as 'land subject to common rights. ... or waste land of the manor not subject to rights of common'. Applications for registration (provisional registrations) had to be made during a three-year period between 2 January 1967 and 2 January 1970. There was a period for objections. Any disputed registrations were heard by a commons commissioner, whose decision could be challenged in the courts.

In 1978, the Court of Appeal decided, in the case *re Box Hill Common*, that 'waste land of a manor' must still be in the ownership of the lord of the manor at the time the validity of the registration was decided. This caused the commons commissioners to reject many applications for registration of commons which were not subject to rights but were not still owned by the lord of the manor; for the same reasons many applicants withdrew their applications.

Overtaken

In 1990, *Box Hill* was overturned by the decision of the House of Lords in *Hampshire County Council v Milburn and others* (the Hazeley Heath case) in which it was held that land was waste of the manor provided it had at one time been part of the manor. This decision came too late for those applications which had been cancelled or withdrawn on the basis of *Box Hill* because the closing date for registrations had passed.

So those commons which were lost due to *Box Hill* may now be reclaimed. To discover which provisional registrations were cancelled or withdrawn, you need first to inspect the common-land register held by your county and unitary authority. You may need to look at the commons commissioners' decisions and visit your local record office.

Further information is on our website and in our free factsheet *New opportunity to rescue lost commons*. Our member Steve Byrne is producing a comprehensive list of eligible areas for each of the registers and this can also be obtained from us. □

Inclosure act thwarts fencing

We have objected to Worcestershire County Council's plan to erect fencing on Hartlebury Common near Stourport.

The council has sought the consent of the environment secretary under section 38 of the Commons Act 2006.

As our local correspondent Edgar Powell points out: 'We cannot understand why Worcestershire County Council proposes to fence the common when it must know that, under the Hartlebury Inclosure Act of 1815 (the associated award being sealed in 1821), it is illegal "to divide or enclose" the common, and that it needs an act of parliament to revoke this clause.'

Predecessor

The council's predecessor, Hereford and Worcester County Council, published a book in 1986, entitled *Hartlebury Common: A Social and Natural History*, in which it drew particular attention to the statutory prohibition on dividing and enclosing the common.

Hartlebury Common is unique and needs special protection. Much of it is designated as a site of special scientific interest with rare flora and fauna. It is also a wonderful recreation area, greatly enjoyed by the public for walking and picnicking; children play informal games and run free there. It is estimated that there are 200,000 visits to the common each year. The public has the right to walk and ride over every part of the common because it is in a former urban district.

Says Edgar: 'We accept that a key element of the solution to the management of Hartlebury Common is to introduce grazing, and that this may require fencing around the edge of the common, albeit with an act of parliament to achieve it.'

Isolated

'We are concerned that the proposed fencing is not truly on the boundary of the common and therefore will create 12 isolated parcels. In particular, fencing is planned along both sides of the A4025 Worcester Road, which crosses the common, thus breaking it into compartments. This will both be an eyesore and a restriction of public access.'

'We advocate a speed limit of 30 mph at most where the road crosses the common. It should be made clear that commons are special. Drivers should not whiz across them, but go carefully, looking out for livestock and appreciating the importance of this special landscape, as they are able to do on other Worcestershire commons,' says Edgar. □

Threatened with fencing. Photo: Edgar Powell.



Pioneering video

The society has starred in a DVD about lowland commons.

The movie was pioneered by Hampshire County Council, Hart District Council, Natural England, the Hampshire and Isle of Wight Wildlife Trust and the society. The DVD, *Common Vision*, focuses on the role of the remaining common land for wildlife, public access and recreation.

Four hundred years ago, half of England was common land, but today greed, intensive agriculture and development have reduced the commons to a mere three per cent.

The video looks in particular at heath and woodland commons in south-east England. The region has many small, at-risk commons, a quarter of the English total. The heathland commons are home to rare species such as Dartford warblers, nightjars and woodlarks.

The magic of the commons is that they are all open-access land, and at the same time they are habitats for a fabulous variety of species. Everyone has a common near to where they live.

Kate Ashbrook being filmed for the video. Photo: Nigel Smith.



The problem is how to defend them. On many it is essential to have animals grazing to prevent overgrowth by scrub, but the danger is that sheep or cattle will wander onto roads and be killed. Yet fences destroy the open freedom of the commons. We must look for other solutions.

The video encourages people to understand and care for their commons.

Already the DVD has been used at an open day for the village of Odiham in north Hampshire, whose 280-acre common is in urgent need of loving care. The society is on the steering group overseeing the process to determine the future of this common.

If you'd like to watch the DVD (27 minutes) there's a link from our website, or contact us for a copy. □

Fund-raising—for survival

Every year the society faces the prospect of a severe deficit. We cannot cut our costs any further without reducing our effectiveness—and the need for our vital work is ever increasing.

Until now, we have been able to rely on the increasing value of our investments and, by chance, on legacies. Obviously in the current economic climate our reserves are shrinking, and we cannot continue to depend on legacies. Our members continue to be wonderfully supportive, and we have recently received an incredibly generous donation from one loyal member. But we need, as the treasurer explained at last year's AGM, to find additional ways of raising funds.

The trustees have agreed that we must raise an additional £100,000 each year in order to retain our current levels of activity. They have formed several working groups to instigate fund-raising; it is essential that these are successful.

If any member can offer us fund-raising expertise or ideas, please contact us. It really is a question of survival.

Far and wide



Planning Act victory

There is much to deplore about the Planning Act 2008, but at least section 139 protects common land, thanks to the Open Spaces Society and supportive peers.

A crucial change was made by the government, at the last stage of the bill's passage through the House of Lords, in response to Lord Greaves (Lib Dem). He raised in committee his concern that the bill overrode the existing protection of common land. He then moved an amendment at report stage which was backed by many peers.

He withdrew his amendment when the government agreed to bring forward its own measure at third reading.

The government amendment reinstated the law that (a) when a common is taken for development, exchange land which is as advantageous to all the interests in the common must be provided and (b) that the environment secretary has jurisdiction over applications for development on common land.

In the words of Baroness Andrews, Minister for the Department for Communities and Local Government, commons are 'an extraordinarily rich and unique part of our heritage'.

Car-park common

Thanks to pressure from the society and the Friends of the Lake District, South Lakeland District Council is reconsidering its plan to swap a common in the heart of Kendal, Cumbria, for land on the outskirts of the town.

The New Road common in Kendal is an eyesore, being used for informal car-parking and encumbered with an unsightly toilet block. Such use should not be permitted—the common is protected by a scheme of regulation of 1910, with bylaws which outlaw car-parking. The district

council should not have allowed the land to be so abused.

In the heart of the town and next to the river, the common offers wonderful opportunities for quiet enjoyment, right on people's doorsteps. It should be tidied up and restored for informal recreation.

The proposed exchange land on the edge of town is already used by the public. So it's not a fair exchange at all.

Battle for Borrowdale

We have joined the battle against plans by Natural Retreats (*sic*) to build a holiday complex in Borrowdale, near Tebay, on the eastern edge of the Lake District National Park.

The scheme is also opposed by the Friends of the Lake District, the Ramblers' Association, Natural England, local residents and many others.

The proposed development would destroy the peace of the beautiful and remote Borrowdale valley, which is enjoyed by walkers, riders and cyclists. The valley is surrounded by access land, where people roam free, enjoying the fine views.

Wanted—a treasurer

Unfortunately our treasurer, Robert Peel, has had to resign due to serious family illness. We are therefore looking for a new treasurer.

We employ a financial administrator who does the bulk of the work, so the treasurer's job is to oversee the society's financial affairs and ensure its financial viability, advise on budgets and accounting, and attend four trustee meetings a year, in London or Reading.

If you are interested, or know someone who might be, please contact the office.

The holiday complex would be a blot on this lovely landscape. Not only would the development itself be intrusive, but the quiet track through the valley would have to be upgraded for use by vehicles which would further destroy the tranquillity.

The area has been identified by Natural England as of national park quality. If it were already in the Lake District National Park, instead of on the other side of the arbitrarily-drawn boundary on the A6 road, this development would be unthinkable.

Unlawful fence condoned

We are dismayed that the National Assembly for Wales has allowed a wall to be built on common land, replacing an unlawful fence, at Gwaun-Cae-Gurwen, near Ammanford in south Wales.

The owners of a neighbouring property applied to the assembly for consent for a wall on the common. The society and the commoners' association objected.

We said that the proposed wall would be of purely private benefit, resulting in the enclosed land being treated as private property.

The assembly's decision endorses the unlawful fence which was erected there without consent. At the very least the applicants should have been required to give land in exchange for that to be taken.

Zoo under pressure

Bristol City Council is at last tackling the parking by zoo visitors on Bristol's unique Downs. It resolved last October that the zoo can only use the Downs for car-parking for one more year, during which it must resolve this long-standing problem.

Over the past decade, the council has given the zoo three temporary permissions while the zoo was to find alternatives, which it has never bothered to do.

The Downs are a unique part of Bristol's heritage, dedicated in 1861 for the public's enjoyment for ever. For too long they have been blighted by the zoo car-park. Yet there are many good parking and public transport alternatives, including the Severn Beach railway and the newly-expanded Portway park and ride.

The council and the zoo must now sort out the parking problem within the year, when at last the Downs will be freed of this incubus.

Twenty-one-year sentence

On 27 January defence minister Kevan Jones and environment minister Huw Irranca-Davies issued a joint statement condemning the Dartmoor National Park to a further 21 years of military live-firing, with no opportunity for a mid-term review into whether the land is still needed.

Come to our AGM

**on Tuesday 30 June 2009 at 11 am
at Friends House, 173 Euston Road, London NW1 2BJ**

- If you would like to submit a motion to the AGM, it must reach us, bearing your signature, by midnight on Monday 18 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 Monday 18 May. There are nine places.

Candidates must be individual members of the society at the closing date for nominations, Monday 18 May.

The trustees meet in London or Reading, four times a year.

If you wish to know what is involved, contact the office for an information pack: telephone 01491 573535, email hq@oss.org.uk.



The view south from Belstone Tor into the military live-firing range, Dartmoor National Park. Photo: A Vincent Bibbings.

The ministers announced that the licence given by the Duchy of Cornwall as landowner, due to expire in 2012, can be renewed until 2033. Live firing not only prevents public access for many days of the year, but it requires look-out huts, flagpoles, notices and other paraphernalia which are intrusions in the wilderness of a national park.

The national park authority has maintained a robust opposition to this abuse and it is deplorable that ministers should have ridden roughshod over it. This year marks the sixtieth anniversary of the National Parks and Access to the Countryside Act which established national parks in England and Wales—a year when we should be celebrating, not damaging, our parks.

We hope to meet the Duchy of Cornwall shortly to discuss the proposed licence.

Warneford Meadow

Warneford Meadow, in east Oxford, looks set to be registered as a town green, protecting it from development by the National Health Service.

This follows the recommendation to register the 20-acre meadow by Mr Vivian Chapman QC, the inspector at the 15-day

public inquiry in 2007-8.

The green application was backed by the Friends of Warneford Meadow and the society which gave the friends £500 towards their campaign.

The recommendation will be considered by Oxfordshire County Council's Planning and Regulation Committee on 6 April.

New green in Taunton

Members of the society have won a new town green between Wellsprings Road and Enmore Road in Taunton, Somerset.

Backed by the society, the residents submitted evidence to Somerset County Council that the land had been used and enjoyed by local people, for informal recreation, for 20 years, without asking permission or being stopped.

The council registered the land in September 2008. This means that it is no longer threatened by development.

Criminal wedding-guests

We have helped residents in Broadway and Buckland St Mary parishes in south Somerset to defeat a planning application to turn farm buildings at Brook Farm into a wedding venue.

South Somerset District Council's

Email addresses

We are keen to communicate with members by email where possible, to save postage costs. If you haven't already told us your email address, please do so by sending us an email at ruthwalker@oss.org.uk. Also, please let us know if you would prefer to have *Open Space* sent to you by email as a pdf, rather than a paper copy. Many thanks.

grounds for refusal included the substandard nature of the access by local highways and a track.

That track was registered as common land in 1984. The applicant had originally wanted to tarmac it and provide passing places, which would have required the Secretary of State's permission for works on common land.

We strongly objected. This would have resulted in more vehicles, travelling at greater speeds. In any case, as the track is common land, any wedding guests using it would be committing a criminal offence. The district council's solicitor agreed.

Trustee from Wales

We are sorry to report that Andrew Hill, our trustee from Wales, has decided to resign after a couple of meetings. We are grateful to him for his contributions during the time he was with us.

Financial administrator

Sad news: Moira Holloway, our financial administrator for nearly six years, is leaving us to join the Henley Regatta. We are most grateful to her for her hard work and wish her the best of luck in her new job. Meanwhile, we welcome Mark Taylor who joins us in March.

Uppies and Downies at risk

Uppies and Downies, the football game played every easter in Workington in Cumbria, will no longer be enjoyed on its traditional site, the Cloffocks. This piece of marshland between the River Derwent and the town, is to become a Tesco store. The society backed its members Christopher

Lasper and Peter Smith in their efforts to save this unique site from development.

Unfortunately, four applications to register the land as a town green failed. Cumbria County Council, surprisingly, did not consider the land had been used 'as of right'. Now Tesco has been given the go-ahead: a sad end for this historic site.

Manvers Green campaign

Residents of the former coalfield village of Wath-upon-Deerne near Rotherham are trying to save the one-hectare Manvers Green, one of the few remaining green spaces in this sooty landscape.

The green is an oasis for residents of the 45 surrounding houses. Several generations

Our new leaflet

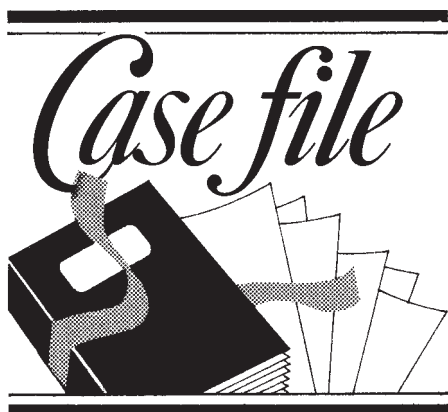
We are enclosing our bright new membership leaflet with this issue of *Open Space*. Please use it to recruit a new member to the society.

of children have enjoyed building dens and running wild, within earshot of their parents. It also provides a place for relaxing, sunbathing, gossiping and blackberrying, among other activities.

The Manvers Green Residents' Association hopes to register the land as a green. There is to be a public inquiry. With support from the society, the group will appear against the landowner Rotherham Metropolitan Borough Council (which is also the registration authority) and Gladedale Homes. For further information see the groups's website www.manversgreen.org. □

Child's campaign poster. Photo: Manvers Green Residents' Association.





Politeness doesn't pay

The Court of Appeal has ruled that Coatham Common in Redcar should not be registered as a green, because the recreational users were too deferential to those playing golf.

We reported in the last issue (page 4) how High Court judge Mr Justice Sullivan rejected an application from Kevin Lewis; he sought permission to apply for judicial review against Redcar & Cleveland Borough Council's decision not to register Coatham Common as a green. However, the judge gave Mr Lewis leave to appeal, saying that 'the ambit of the deference principle is something which is not determined, and therefore there is a real prospect of success' in a higher court.

On 15 January, the Court of Appeal issued its judgment (*R (Lewis) v Redcar & Cleveland Borough Council and Persimmon Homes (Teesside Ltd)* [2009] EWCA Civ 3).

In order to claim the land as a green, the applicant had to show that local people had used it for 20 years, without being stopped or asking permission. He needed to demonstrate that they had used it as though they had the right to do so. But, as explained in our earlier article, the land was, until 2002, used as a golf course, and the public had deferred to the golfers. Walkers would stop and wait while the golfers played a shot.

In the leading judgment, Lord Dyson ruled that, in order for the land to qualify as a green, the use by the public must be 'sufficient to bring home to the reasonable owner [or his lessee or licensee] that the local inhabitants have been asserting a right to the use of the land'. If people adjust their behaviour, 'they give the impression to the owner that they are not claiming a right to do what they are doing'.

Lord Dyson concluded that 'Those who *always* defer to the owner whenever his competing use of the land threatens to interfere with their use of the land are not likely to convey to the reasonable owner the impression that they are claiming the right to use the land. ... Crucially, the inspector [at the public inquiry] found that the local inhabitants "overwhelmingly deferred" to the golfers.' However, 'the decision for the inspector was on a question of fact and degree' so if there had been give and take on both sides, the outcome might have been different.

It is devastating that, because the users were polite to the golfers, they have been penalised. That politeness has lost the public their green, which is now threatened by development.

Gates to go

Our member Peter Kidner has won his long battle to free Barcroft Lane, footpath Y24/10, in the parish of South Petherton, Somerset, from illegal obstructions. The case went all the way to Taunton Crown Court (*Mr B and Mrs D Herrick v Peter Kidner and Somerset County Council*).

Brian Herrick of Barcroft Hall erected intimidating gates across the lane, an ancient driveway, in 2004. These were often locked or at best difficult to open. Somerset County Council took him to court and, in June 2006, he was found guilty of wilful obstruction, but the magistrates did not exercise their discretionary power to order the removal of the gates. Unfortunately the council failed to act, so Peter served a notice on the council, under section 130A of the Highways Act 1980, to require it to remove the obstruction.

Peter won his case in Yeovil

magistrates' court in 2007 (os spring 2008 page 8) with District Judge Parsons ordering the removal of the gates, pillars etc within 70 days. Somerset County Council was willing to secure their removal.

However, before this could happen, the landowner had appealed to the Crown Court and briefed Tim Mould QC. Peter Kidner briefed George Laurence QC and the case was heard in December 2008.

Our general secretary Kate Ashbrook gave evidence in support of Mr Kidner's application, pointing out, in particular, that the gates, whether opened or closed, were a severe deterrent to the public.

On 9 February, His Honour Judge Longman, who was assisted by two magistrates, delivered his judgment in favour of Peter Kidner. He made an order that Somerset County Council remove the middle pillar and upward-pointing light, all the gates and their electronic opening and closing mechanism. It must also install a finger-post to the west of the gateway (ie outside the property) indicating the route of the footpath.

Significant

The principal argument was about whether the structure 'significantly interferes with the exercise of public rights of way over that way', a requirement of the legislation which can prevent success in many cases. Tim Mould, had argued that, in determining what was a significant interference, one should take an objective view and that, provided the gates were permanently open, no order should be made.

The judge considered that the legislation 'is intended to give individuals the power to take action against highway authorities who do not appear to them to be doing their job sufficiently or at all. ...

'We see no reason to interpret the section in a way which requires it to be read as meaning "significantly interferes with the exercise of public rights of way over the unobstructed part of that highway". The public's right of way is over the whole of a highway not just part of it. If a landowner places an obstruction on a highway, it should not be open to him to protest that the

public can walk around the obstruction. Members of the public, who are entitled to the use and enjoyment of a highway, should not have to walk round obstructions placed in their way; where they do they should be able to have recourse to the section 130A-D procedure if the highway authority's response is inadequate. We find that the section 130A-D procedure does give them such recourse. ...

'We find, therefore, that parts of the structure are on the footpath and do significantly interfere with the exercise of public rights of way over it.'

Timid

Of Kate Ashbrook's evidence, he said: 'She spoke of how walkers can be timid about walking through what appears to be private property. We accept that such feelings are widespread, and likely to be felt by many where a footpath passes close to a house or garden. We recognise that leaving the outermost pillars will still give walkers a strong indication that they are entering "private property", and discourage some from entering between them. We think that, to a great extent, such walkers will be emboldened by waymarks clearly indicating the existence and direction of a right of way. We therefore order the council to erect a fingerpost outside the gateway.'

The timing for the removal of the structures and the matter of costs have yet to be determined. Assuming that there is no appeal, this is an excellent outcome and will give a boost to all those who are faced with trying to reopen illegally-blocked paths. We congratulate Peter on his courage and persistence in seeing this through. □

*The middle pillar and gates are to go.
Photo: Kate Ashbrook (April 2007).*





Wrong legislation at Sudeley

We challenged Gloucestershire County Council's approval of the temporary closure of public footpaths at Sudeley Castle, Winchcombe, for four occasions over last summer, totalling 11 days.

With the Ramblers' Association we argued that the closures were made under the wrong legislation. The council used section 14 of the Road Traffic Regulation Act 1984, instead of section 16 which applies to closures for special events and requires the Secretary of State for Transport's approval for closures lasting more than three days. Moreover, the identified alternative routes were inconvenient for walkers. The county council has agreed to review how it will react to a similar application for next year.

Says Gerry Stewart, our local correspondent: 'This review is good news. The closure of several public footpaths for many summer days caused exasperation to regular visitors who enjoy strolling around the castle and park.'

Readheads Landing byway

South Tyneside Council has confirmed an order to add Readheads Landing, South Shields, to the definitive map as a restricted byway.

Readheads Landing is a 76-metre cobbled path running westwards from Corstorphine Road, alongside the boatbuilder's yard to mean high-water point. There is evidence that it is a public highway

because ships landed here and the crews went ashore along the path.

The path remained open until the adjoining boatyard changed hands and locked gates were erected. Until then the path had been used and enjoyed by photographers, anglers, local historians and others who enjoy walking to and beside the river. It is part of South Shields' maritime history and an asset to the path-map.

Jolly Sailor win

Two footpaths which lead to the foreshore of the River Hamble, in front of the Jolly Sailor public house at Bursledon in Hampshire, have been added to the definitive map, thanks to the efforts of Diane Andrewes, honorary secretary of the Bursledon Rights of Way and Amenities Preservation Group and one of our trustees (os summer 2007 page 6).

The two paths run from Lands End Road; they join and drop steeply down to the pub and the River Hamble foreshore.

Diane campaigned for ten years to get

Standing as a trustee

The society's members will be electing nine trustees at the annual general meeting on 30 June. We are looking for members to stand, and in particular would like to extend our range of skills and ages.

The average age of our trustees is 64 and only two are women. Most come from southern England and none from Wales. We have no one from an ethnic minority. We should particularly welcome candidates with fundraising or financial expertise and acumen.

Trustees attend four meetings a year in London or Reading (with expenses reimbursed) and you may volunteer to serve on a subcommittee or working party. The essential requirement is to act in the best interests of the society at all times.

If you'd like to know more about it, please contact the office. You would be welcome to attend one of our meetings as an observer. The closing date for nominations is 18 May.

these paths on the map. The highway authority, Hampshire County Council, was slow to consider the application and then decided not to proceed with it, so Diane had to appeal to the environment secretary to direct the council to make the order. There were objections and a public inquiry was held. As Hampshire County Council adopted a neutral stance Diane had to take the lead.

Diane called ten witnesses who told of their use of the paths. One of them was Mrs Mellan, the former landlady of the Jolly Sailor, who owned the property between 1978 and 1986 and gave evidence of public use of the routes. The objector at the inquiry was Mr Barham, whose family had held the licence of the Jolly Sailor from 1884 to 1944 and who claimed that there was a sign saying the route was private.

Heidi Cruickshank, the inquiry inspector, concluded that the route probably originated as an access for the Jolly Sailor and to the foreshore, often in connection with boating. Public use gradually increased after the objector's family left the Jolly Sailor. By the time of the application to add the route to the definitive map there had been 20 years uninterrupted use by the public, so the inspector confirmed the order. (FPS/Q1770/7/18, 9 October 2008)

Sports pitches oust paths

The inspector's decision on the diversion of footpath 223 at South Purdown, Bristol, came as an unwelcome christmas present for OSS member Sue Flint and the Friends of South Purdown. Peter Millman confirmed the order to divert the footpath, under section 257 of the Town and Country

One of the claimed routes across the down, to be destroyed by the development. Photo: Kate Ashbrook.



Visit our website!

We have a brand-new website. Now people can join and buy our publications online, and our information is displayed much more clearly and attractively. Visit it now at www.oss.org.uk.

Planning Act 1990, to make way for sports pitches, despite 11 objections.

The diversion moves the path from a route across the open hillside with extensive views, to the edge, alongside a hedge.

The objectors argued that it was not necessary to move the path in order to develop the site: the development should accommodate the path on its present route. The pitches would desecrate this much-loved open space, a splendid gateway to Bristol.

The campaigners submitted evidence to Bristol City Council that other public footpaths across the site should be added to the definitive map. We argued that the council should have made diversion or extinguishment orders for these routes too, as they are public highways. The inspector dismissed this argument. He considered that it was necessary to divert the route in order to implement the planning permission, and that the diversion would have 'a very small negative effect on public enjoyment of footpath 223'. (FPS/Z0116/5/2, 23 December 2008)

Path stalwarts remembered

Three long-standing members of the society, who were passionate about public rights of way, have died recently.

Harry Comber (84) was active in the Sussex Area of the Ramblers' Association, and author of a number of walks books. He administered our Eastbourne Downland Footpath Fund, which ensured that the paths around his home town of Eastbourne were signposted and waymarked.

Tony Youngs (86) from Redhill in Surrey has left a generous legacy to the society. He was also a keen member of the Long Distance Walkers' Association and was particularly fond of the South Downs.



Luton Borough Council has reopened two illegally-blocked footpaths, thanks to our member Mike Clarke. The council had threatened to extinguish them, claiming they were not needed for public use. Yet both provide traffic-free, useful short cuts for walkers. The Beech Hill path (above) was illegally blocked by a fence at each end, which the council has now removed. The Strathmore Avenue footpath was full of rubbish and vegetation, and Mike served a notice on the council, under section 130A of the Highways Act 1980, requiring it to reopen it. Faced with possible court action, the council complied. As the right-hand photos show, both routes are now open and usable. Photos: Mike Clarke.



Fred Matthews (85) was a founder of the Essex Area of the Ramblers' Association and was a legendary campaigner for paths in Essex. He devised the Essex Way, and the annual 100-mile walk on Essex paths, thus putting pressure on the council to act.

Structures update

The working party which is developing guidance about structures on public paths has nearly completed its business, and the Department for Environment, Food and Rural Affairs (Defra) is now considering a draft document. The society was represented on this group by our trustee Chris Beney. Chris will be preparing a summary of our survey last year of

councils' policies and practices relating to structures, and we shall report on this and the Defra guidance in a future issue of *Open Space*.

Threatening guard-dogs

When she was consulted on a planning application for a large equestrian development at Hilton Moor Farm at Evenwood in County Durham, our vigilant local correspondent Jo Bird asked that any permission should be dependent on the footpath, which passes through the site, being kept clear of obstruction at all times.

At the time of the application, the path had been partially obstructed and there were intimidating signs, one warning of



guard dogs, and one stating ‘our dogs bite’, which Jo had reported to Durham County Council, the highway authority.

When she visited the site again, the latter sign had been removed, but an Alsatian dog sat watching her (see photo above). The path runs to the right of the picture and within a few feet of the dog which, being on a long chain, could reach walkers.

Jo asked that the ‘informative’ accompanying any planning permission should include a point about guard dogs. As a result the following was added: ‘Guard dogs must not be chained in close proximity to the right of way to prevent users from being intimidated.’

Boat club catches a crab

Chris Hall, our correspondent for Oxfordshire, reports: Below is a fine piece of arrogant law-breaking committed by the

Oxford University Boat Club against users of the Thames Path at Wallingford. The building in the background is the massive premises which the club has built across Wallingford footpath 1 (part of the Thames Path). In front, between the industrial-style railings, you can see a bridge; this is swung aside to let boats pass in and out of the club’s shelter to and from the river (out of sight to the left). When this happens walkers cannot cross the cut. The club wants to divert the path onto this bridge.

The oss says no—unless two conditions are met: (1) tight, enforceable controls on the length and frequency of times during which the bridge may be open (and the path thus closed) and (2) a definitive alternative path round the building in case the bridge is jammed or flooded. The boat club is very

Thank you

We have raised over £15,000 from your generous donations to our appeal to support members taking legal action. What a magnificent response: thank you.

reluctant to meet either condition. It claims that it opens the bridge for launches only very rarely and for a few minutes at a time. Maybe so, but the Thames Path is going to be here for many years—and perhaps long after the boat club has gone and been



replaced by a commercial marina pushing boats in and out every few minutes.

After much prevarication, the club's Director of Rowing, Mr Steven Royle, who was personally responsible for building across the path, has agreed to consult the club's lawyers about a covenant which would set permanent conditions for the opening of the bridge. He has also—even more reluctantly—agreed to make a route for an alternative path (condition (2) above).

It remains to be seen whether Mr Royle will do either of these things (he promised but failed to deliver a covenant on conditions back in July 2007). But he has

now given undertakings at a meeting (February) with us, and the South Oxfordshire District and Oxfordshire County Council. We shall hold him to that.

Monmouthshire's volte-face

Monmouthshire County Council has said it will reconsider its path-prioritisation plans, after fierce criticism from the society and other path users. The council planned to create two categories of path. The second category, which would be given lower priority, included isolated paths, those where the cost of improvement 'cannot be justified' and those in sensitive habitats. Clearly that was unacceptable. □

Meriel Biggs

Last year our member Meriel Biggs died, leaving us a legacy. Beaujolais Rood, her neighbour for 38 years, writes of Meriel's fascinating life.

If Meriel had been born of a later generation she would have accomplished much. Nevertheless, she was full of enthusiasm for new ideas, with a keen intelligence, delighting in words, reaching out to people, and always wanting to hear their best news and encouraging them.

Meriel Edith Dixon Biggs, known as Binkie, was born in Widford in Hertfordshire in 1911. At school she excelled at athletics and was the long-jump champion. Her headmistress suggested that she study medicine, but her mother put paid to that idea saying that her daughter did not need a career as she would get married.

Literary agents

She started work as a secretary with the top literary agents Curtis Brown in London. When authors such as Osbert Sitwell came to discuss their books she would draw cartoons of them on sheets of paper under the table. She kept some in an album which she presented to Curtis Brown in 2007. She told me how Frieda Lawrence, widow of D H Lawrence, would come in to discuss royalties wearing brightly coloured clothes and talking in a loud voice.

Much as she enjoyed Curtis Brown,

the pay was poor and she moved on to work for publishers and then an engineer.

During the war Binkie volunteered as a fire warden, and one of her letters contains a lively description of an evening at the shelter. Her duties were to patrol the streets at night ensuring all were safe.

After the war she got a scholarship to study music and won several awards. She taught piano and liberal studies, which included English and drama.

Festival

In 1962 she organised a Brooklands music festival in Surrey, featuring musicians such as Neville Marriner and Leo Goossens. She had a good eye for art and many local artists appreciated her constructive criticism of their work.

She supported sports as a way of keeping young people off the streets and became involved in several local campaigns to save public spaces. She wanted her house and garden to be made into a small park when she died, but unfortunately the council did not accept the idea.

Binkie was an indefatigable campaigner and writer of letters to newspapers on such diverse issues as background music spoiling programmes, foxhunting, airport noise and nuclear waste, cycling on pavements, skateboarding on the local rec and women in parliament (if only to enliven rows of boring suits).



England as it is

Real England: the battle against the bland by Paul Kingsnorth (Portobello, £14.99) records how this country is deteriorating. He describes the loss of individuality, quirkiness and romance to car-parks, shopping centres and health-and-safety rules.

He travels round the country, going to everyday places and meeting threatened breeds of fruit-growers, lock-keepers, stall-owners, farmers and publicans.

'Paradise'

In April 2006 he visited a vast hole in Liverpool with our trustee Don Lee. The hole was the 'Paradise Project', to be the biggest retail development in Europe. The development company is Grosvenor, owned by the Duke of Westminster, the country's third-richest man.

Says Kingsnorth: 'This is not a development which will allow the area's own character to evolve over time. ... This is the way the deal works. The city council gets an expensive, flashy renovation of a currently run-down area, costing almost a billion pounds, for which it has to pay virtually nothing. In return, however, it must give up—in other words, the public must give up—their rights to it. ...

'The rules you will follow will be the rules set down by Grosvenor. The uniformed officers on the streets will not be the police, they will be private security

guards, and they will be enforcing those rules. These are the streets of one of our major cities. But they no longer belong to its people.'

But Liverpool is only one of many. As Kingsnorth says, they are 'not just clone towns but private clone towns, where you will behave as instructed, you will shop sensibly, and you will leave at the designated time.'

A fascinating, but depressing book.

The Dartmoor Reaves: investigating prehistoric land divisions by Andrew Fleming (Oxbow Books, £20) was first published in 1988, and this is a reprint with two new chapters and colour illustrations. Reaves are prehistoric land-boundaries and, unlike other features such as the stone rows, hut circles and cairns, little was known about them until the 1970s. Fleming describes his fieldwork which led to his discovery of their significance to Bronze Age society.

Walking Aloud: rambles in the Cherwell valley by Kim Taplin (Wychwood Press, £9.99) demonstrates the therapeutic value of walking. Kim wanders the tracks and fieldpaths around her home of Tackley, in a roughly diamond-shaped patch of Oxfordshire, bounded by Banbury, Kirtlington, Kidlington and Stonesfield. She has an eye for detail, describing it in a refreshing and graphic manner. A peaceful, restful and most unusual book.

Walking in the Thames valley by Steve Davison (Cicerone, £12) is a useful, pocket-sized book containing 25 walks of varying lengths. **KA**

Our open day—15 August

This year our general secretary will have been in post for 25 years. To celebrate her first quarter century with the society we are organising an open day for members on Saturday 15 August. It will probably be in the Chiltern Hills in Hertfordshire, with walks and other entertainment. Further details will be given in the next *Open Space* but please note the date now.

John Collins & Partners LLP Solicitors has a dedicated team specialising in all aspects of the law relating to Access to the Countryside.

We regularly advise on the following areas:

- + Common land
- + Creation of public rights of way - including public inquiries
- + Interference with public rights of way
- + Planning, including TPOs and listed buildings
- + Private rights of way
- + Village greens and open spaces

For a full range of private and commercial services, please contact Rory Hutchings on 01792 525402 or Neil Jacobi on 01792 525401

We offer a 30 minute FREE legal advice scheme to members of the Open Spaces Society. Where you require specialist advice (over and above that offered by OSS) please contact Kate Ashbrook who will refer matters to us.



Venture Court,
Waterside Business Park,
Valley Way,
Enterprise Park,
Swansea, SA6 8QP

T: 01792 773773
F: 01792 774775
E: law@johncollins.co.uk
W: www.jcpsolicitors.co.uk

JCP John Collins & Partners LLP
Solicitors



25A BELL STREET HENLEY-ON-THAMES OXON RG9 2BA TEL (01491) 573535
E-mail: hq@oss.org.uk Web: www.oss.org.uk

The Open Spaces Society, formally the Commons, Open Spaces and Footpaths Preservation 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, and we manage and preserve open spaces which we acquire by gift or purchase. As a registered charity (214753) we rely on voluntary support from subscriptions, donations and legacies.

Officers and trustees

<i>Chairman</i>	Rodney Legg	
<i>Vice-Chairman</i>	Phil Wadey	
<i>Treasurer</i>	Vacant	
<i>Trustees</i>	Diane Andrewes	Peter Newman
	Chris Beney	Peter Turtill
	Tim Crowther	Jackie Warr
	Donald Lee	John Willson

*General secretary
and editor*
Case officer

Kate Ashbrook
Nicola Hodgson

£4.00

New subscription rates from 1 Jan 2009

Individuals: ordinary £37 new, £30 renewal; joint ordinary £52 new; £45 renewal; concessionary £22 new, £15 renewal; joint concessionary £29 new, £22 renewal; life £600.
Local organisation, parish, community and town councils: £52 new; £40 renewal.
National organisations; district and borough councils: £150.
County councils and unitary authorities: £350.