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SIXTH NATIONAL SEMINAR ON COMMON LAND AND TOWN AND VILLAGE GREENS

PROCEEDINGS

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Edited by

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ENGLISH NATURE

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INTRODUCTION

Christopher Short *Seminar Convenor, Countryside & Community Research Unit, University of Gloucestershire*

A wide-ranging audience of over 200 delegates attended the 6th National Seminar on Common Land and Town and Village Greens on Thursday 14 September at the University of Gloucestershire. For the second year the event was sponsored by Defra.

A strong programme focused extensively on the Commons Act 2006 that received royal assent in July 2006. Professor Adrian Phillips, who was Director General of the Countryside Commission at the time of the Common Land Forum opened the seminar with a short introduction and reflected on the time taken to secure legislation on common land and village greens. Four members of the Defra team responsible for common land then introduced and outlined various aspects of the Commons Act, taking questions from the audience. Catrin Dellar then briefly outlined how the Act would be implemented in Wales.

The role of Natural England and the Countryside Council for Wales as 'champion of the commons' was summarised by Graham Bathe (English Nature) and Buddug Jones (CCW), who both outlined the importance of commons for nature conservation, heritage, recreation and access.

Graham Brown of English Heritage spoke about the Urban Commons project that was looking in detail at the archaeological features on a sample of town commons such as that in York, Beverley and Newcastle.

The workshops were divided in to two. The first group involved mostly Defra staff who spoke in more detail about the opportunities within the Commons Act 2006. This included the registration of Town and Village Greens, missing and wrongly registered commons, commoners' councils and the protection of commons. The second group of workshops focused on case studies of positive management and protection and included a discussion on Federation and Councils from those involved in the Welsh Commons Forum and the Cotswold Conservation Board who have developed a strategy for lowland commons.

Overall the seminar proved to be very successful with an excellent level of participation and discussion between different interest groups as well as different parts of England and Wales. It is clear from the evaluation that the majority of delegates found the seminar informative and interesting and I would like to thank the considerable effort of all the speakers and those involved in the workshops.

Christopher Short February 2007

WELCOME

Professor Adrian Phillips *Director General of the Countryside Commission, 1981 - 1992*

Just as the history of commons is measured in centuries, so the story of efforts to produce effective national common land legislation can be measured over many decades. In all matters affecting common land, things take time. So forgive me if I begin by looking back over a number of years.

The 1955 Commons Royal Commission was set up to see what was needed in law to promote and balance the needs of owners of land, commoners and the enjoyment of the public. It called for legislation to deal with registration of common land and town and village greens, public access, and improved management. The Commission's report was followed by the Commons Registration Act 1965, but this dealt only with some aspects of the registration of common land and greens. A lot of unfinished business remained, and it fell to the Countryside Commission to take up the baton some twenty years later.

The Commission set up the Common Land Forum to try to bridge gaps between commoning, landowning, access, conservation and local authority interests. Its report was published 20 years ago. Led by the patient and wise Maurice Mendoza, who sadly died recently, and owing a lot to the drafting skills of Len Clark, who is still very much with us, the forum achieved consensus. Its members made recommendations, via the Commission, to the government to overcome the deficiencies in the registration process and to address the outstanding issues of access and management. It seemed as if action would quickly follow, but unfortunately the landowning commitment was less robust than the Commission had hoped and the deal fell through. It was not until 2000 that an unqualified government commitment to enact legislation was made. The CROW Act of that year dealt with the access aspects and now, with the enactment of the 2006 Commons Act, the story is essentially complete, more than half a century since the Royal Commission's work.

Maybe 'complete' is tempting fate – I suspect that common land legislation will always be with us. But at least we now have a firm foundation of law that protects commons and the commoners' way of life, which should help ensure the proper management of this extraordinarily rich heritage of over 570,000 hectares and makes these marvellous places available for all to enjoy. What we now need to do is to use the new act to good purpose. That is what this conference is all about.

Before we embark on our two days, we should pay tribute to those, for example in the Open Spaces Society, who never gave up the quest for proper legislation; to those, such as the unit here at the University of Gloucestershire, who have provided a forum to debate common land issues and who have illuminated that debate with well-researched facts; and to those civil servants who have had to master the arcane details of common lands legislation. Without all their efforts, over so many years, we would not now be celebrating the passing of the 2006 Commons Act.

THE COMMONS ACT 2006 AND PLANS FOR IMPLEMENTATION

David Calpin *Defra*

The Commons Act 2006 has three main parts:

- Statutory commons councils: which will enable commons to be managed more sustainably by commoners and landowners working together through statutory commons associations, with powers to regulate grazing and other agricultural activities

- Protection: which overhauls the consents system for works and fencing on commons and ensures that existing statutory protections are applied consistently.

- Registers: the registers of common land and greens provide conclusive evidence of the status of common land and greens, so that the special status of the land can be identified and protected.

The passing of the Commons Act is very significant. First it proved wrong those who thought the subject too complex and too low profile. It's not surprising that there were so many pessimists. In the last century, we had just two Government Bills to do with common land, and the latter, the Commons Registration Act 1965, was widely criticised for creating as many, if not more problems than it solved. The Commons Act is the first ever Act to present reasonably comprehensive measures on common land, dealing with registration, management and protection in one place. So it's quite an achievement.

The reasons underpinning the Commons Act centre around the fact that common land is an important part of our national heritage and that much of this land is at risk. The legislation is essential to help the Government meet its PSA target for sites of special scientific interest (SSSIs). The Act will protect common land for current and future generations and it will underpin reforms to commons registers.

The process of formulating the Act has done much to raise the profile of common land among our stakeholders and the public. Many more people are now talking about the needs of common land, rather than treating common land as a rather irritating designation which restricts what can be done with land, as will become clear today. Defra plan to continue seeking greater engagement with our stakeholders: for example, we already have plans for:

- consulting on the implementation of the main provisions in each part of the Act;

- continuing to expand the information available on our website;

- making available a complete set of Commons Commissioners' decisions in electronic form, to assist in the implementation of Schedule 2 to the Act, as well as an electronic version of our database of consents dating back to the beginning of the last century — over 5,000[1] decisions;

- improving our communication, for example, by sponsoring these seminars;

- setting up the National Common Land Stakeholder Group.

It is anticipated that the National Common Land Stakeholder Group will provide advice on the implementation of the Act, advise Government on the management of commons as well as informing policy. We envisage inviting 20 to 30 members to participate with biannual meetings and working sub-groups.

[1] The database of consents is now available on the Defra website, at: www.defra.gov.uk/wildlife-countryside/issues/common/index.htm

THE MANAGEMENT OF COMMONS

Marian Jenner *Defra*

The Commons Act responds to concerns about the lack of effective mechanisms to manage commons by providing for:

- self-regulating statutory commons councils;
- power to deal with unauthorised agricultural activities;
- ban on severance of rights (with exceptions).

Commons Councils

By establishing commons councils; commoners, owners of common land and other legal interests in the common will be able to work together to manage the agriculture, vegetation and common rights on the common. We expect they will be one of the key tools in improving the environmental and agricultural management of commons. Commons councils will make it easier to enter into agri-environment agreements — that is, government-funded schemes under which farmers sign long-term agreements to manage the land in particular ways in order to protect, enhance or restore biodiversity, landscape features and the environment in return for annual payments to offset the income forgone and additional costs of changed farming practices. They will be able to secure compliance with the conditions of such agreements through their rule-making function (which enables a commons council to make legally binding rules which may be enforced through the courts where non-compliance occurs).

Commons councils will not be imposed by government: we see them as a bottom-up approach rather than top down. Although each commons council will be established by Defra (or NAW) through a statutory instrument, we can only do so where there is substantial local support.

Defra is working towards the first commons councils being established by early 2008. We are aware that there needs to be a better understanding of how they will work in practice and will be taking steps to consult widely as policy is developed.

Defra will work closely with Natural England on all this, through developing our priorities for commons councils; identifying opportunities for the early establishment of pilot councils; determining how best to establish common councils, (including consideration of 'off the peg' models to assist stakeholders); and the development of the standard constitution and establishment orders for initial councils.

In implementing this part of the Act Defra propose to target our resources where commons councils are most likely to help us meet our wider public benefit objectives, and to establish common councils in the best possible way that will enable them to operate effectively.

Other management tools

The Act includes a ban on severance of rights to ensure that common rights largely remain attached to local holdings (with exceptions). There is also a power for Defra/NAW to take action against unauthorised agricultural activities that are detrimental to the common.

PROTECTION OF COMMON LAND

Elaine Kendall *Defra*

The present position is that most (but not all) commons are already subject to controls on works and fencing through the Inclosure Act 1845, Law of Property Act 1925 or the numerous other functions assigned to the Secretary of State. Powers of enforcement are also limited to specified persons.

Part 3 of the Act introduces a more consistent and modern control regime which applies the controls to all registered common land and extends the provisions for taking enforcement action against unlawful works to "any person".

In developing the Act, Defra has looked closely at how the system can be improved for those considering making an application for works on common land, or wishing to make an exchange of common land. Defra will develop guidance which will steer people through the considerations they should make before undertaking works and lead them along the correct route for their applications. For example, we will make it clear which works are exempt. We also want the decision-making process to be transparent so that people are assured that their application is considered on its merits and it can be clearly understood why an application has succeeded or failed, or why a particular application route was necessary. We will be looking at charges for the services we provide and our objective is to seek full cost recovery.

The enforcement regime has changed so that there is now a consistent statutory protection for commons. The new Act provides that action against unlawful works can now be taken by 'any person'. Defra will be producing guidance for those wishing to take action, including clear guidance to local authorities.

Defra is also looking closely to see if some of the rare and minor functions that we carry out are best performed by us. We are asking whether we add value to the process and what risks there might be if we withdrew from the processes. We have identified a limited number of functions that we could consider revoking, these include the approval of certain stint rates and the appointment of certain commons conservators.

The timetable for implementation is approximately as follows:

- Early 2007 - consultation;
- Spring 2007 - consideration of responses to consultation;
- June/July 2007 - lay regulations and issue guidance to stakeholders on new procedures;
- 1 October 2007 - regulations come into force;
- 1 October 2007 - transfer of consent functions to delivery body.

REGISTRATION OF COMMON LAND

Hugh Craddock *Defra*

Within the registration section of the Act, the starting point is that commons and greens were already registered under the Commons Registration Act 1965. However, the 1965 Act was flawed as it was intended only as a fact-finding exercise, with further legislation intended to follow at short order. Hence the 1965 Act represented a historical snapshot and, perhaps because it wasn't intended to stand the test of time, the Act also brought about many mistakes and omissions in the commons registers, which could not and cannot be corrected.

So Part 1 of the 2006 Act makes provision for improvements to the commons registers. In particular under 'Improvements to commons registers' the Act provides for accurate and up-to-date commons registers to underpin commons management. It does this in three main ways. First there is a duty on local authorities to update and maintain registers of common land and town and village greens, a duty they can only fulfil by working with the interests in common land and the public to ensure 'missed' events can be registered. Second the Act includes provisions to ensure that future transactions will have no legal effect unless they are registered. Meaning that, for example, if a landowner buys out a right of common, his efforts will count for nothing unless the transaction is properly registered. Lastly the Act enables local authorities to correct some clerical errors, but it is not an unlimited power to change the registers to correct past mistakes. For example, it will be possible to correct the definition of a dominant tenement to which rights of common are attached, but not change the quantification of a right, such as the number of sheep, which can be grazed by virtue of the right.

Part 1 also allows for some re-registration and de-registration. Under the former it allows for the registration of 'missed commons' in limited circumstances so they are subject to the same safeguards as other commons. There is also provision for some wrongly registered land to be removed from the registers. This section also includes provision for the voluntary de-registration of common land to allow development to take place where equally advantageous land is given in exchange and it is in the public interest. The Act prevents the de-registration of common land in other circumstances, to ensure its continued protection.

Implementation of Part 1 will be carried out over an extended period, determined by the lessons learned from a pilot implementation, and the resources available to fund local authorities' obligations. Defra is committed to consult on how we implement Part 1, and we hope to go out to consultation in the first half of 2007. The aim is to implement Part 1 initially in pilot areas, so as to test the efficacy of the regulations, guidance and processes, and to enable modifications to be made before or during the roll out subsequently. This approach is also intended to enable funding to be targeted at the participating registration authorities. The subsequent roll-out of Part 1 should take place on a region-by-region approach. This means that, on one prospective timetable, the implementation of Part 1 will not begin in the final region until 2014.

The outcomes Defra are seeking from the implementation of Part 1 are that:

- statutory registers are brought back up-to-date and kept up-to-date;
- eligible errors and omissions are resolved;
- commons and greens remain permanently registered and therefore protected;
- 20-year greens become registered without undue delay together with greater clarity about the status of such areas;
- registers are converted to electronic form, so that data can be more effectively and widely shared.

A further outcome is to begin a process of repealing out-of-date legislation including the Commons Registration Act 1965. This process has already begun, since we will commence repeal with sections 8, 9 and 13(a) on 1 October 2006.

IMPLEMENTATION OF THE COMMONS ACT 2006 IN WALES

Catrin Dellar *WAG*

The Welsh Assembly Government's work to implement the Commons Act (apart from Part 3 which is under our Planning Division's remit) is taken forward by the Countryside Access team alongside rights of way, coastal access, access to water and other issues. The advantage of this approach is that we are able to integrate commons policy into other areas such as countryside access. However it does mean that there is competition for resource and priorities.

Under current procedures putting any Orders or legislation through the National Assembly is quite a lengthy procedure, as all provisions including those that only need to be commenced, must go through the committee stages before being voted on in Plenary. In addition to this all regulations must be consulted upon prior to being made.

This will change under the new Government of Wales Act, which received Royal Assent on 25 July 2006 and will be implemented after the Assembly elections in early May 2007.

Under the Wales Act the procedures for secondary legislation will be simplified, with more of the Assembly scrutiny time being given to the new Measures rather than to subordinate legislation.

The temporary severance provisions are the Assembly Government's first priority for implementation of the Commons Act. In Wales the process of bringing them into force couldn't begin until the Act received Royal Assent. It is hoped that the consultation period will begin at the end of this month with the expectation of a coming into force date in spring 2007.

Thereafter our priorities for implementation will be registration issues under Part 1 and works under Part 3, and the provisions relating to statutory commons councils.

Registers are the most significant chunk of the work we have before us. We are aware of the significance of the transitional period in which commons registration authorities will be assessing and updating their registers. For this reason we must decide carefully how we take this task forward in Wales and what time period we give for this work to be completed; what the relevant regulations will cover and what additional support, including financial, will be needed by Commons Registration Authorities to complete the task. As a first step CCW is scoping the condition of registers in Wales.

In relation to Part 2 and Commons Councils, we will be working with CCW to identify what practical support might be needed to help in the establishment of statutory commons councils. This work will be critical in underpinning the implementation of those provisions in Wales.

We are fortunate in Wales to be a small nation and therefore able to keep in close contact with our stakeholders on a regular basis.

In June 2005 we set up the Wales – Commons Bill Stakeholder Group with the view to not only provide our partners with information on the progress of the Bill through Parliament, but also to seek their expertise in all matters relating to commons and greens. At the request of those represented on the Group, the Group will continue to meet to help guide the implementation process in Wales.

TOWN AND VILLAGE GREENS – WHAT THE RECENT CHANGES TO THE LAW MEAN IN PRACTICE

Paul Johnson *Countryside Agency*

It is important to say at the outset that Town and Village Greens (TVGs) represent a different legal concept from common land. They are not about manorial or 'taking' rights as commons are, they are about people's recreation. As a result they are based in the law of custom, the local law of places. In the case of TVGs all inhabitants, not just some, held the rights. The 1965 Act treated the registration of common land and TVGs as mutually exclusive, although historically they often overlapped.

The 1965 Act enabled 20 year claims, and so claims became possible again in 1990. Not surprisingly the threat of development proposals often trigger claims. Some claims are legitimate, some aren't, but for all the core concept is 'as of right' use i.e. use not by permission, force or stealth.

During the development of the Bill it was clear that several things needed to be sorted out. There needed to be a consolidation of the 1965 Act registration power, several aspects of registration criteria needed to be clarified, for example section 22. The Trap Grounds case was an obstacle to registration and this needed to be tackled. As one would expect, further detail added as the Bill went through Parliament, for example specifying the length of 'period of grace' for applications and issues concerning developed land and the dedication of new land.

In what became section 15 of the Commons Act 2006, much is retained from 1965/s22. For example the 2006 Act refers to a 'significant number'... of inhabitants of any locality ... or any neighbourhood within a locality ... using land for 'lawful sports and pastimes' ... for at least 20 years' use. The focus is on meeting the s15 criteria rather than 'becoming' a TVG.

As many of you will know the CROW amendment to the TVG definition was deficient as it effectively required continuing use by locals even up to the date claim is determined (as indicated in the Trap Grounds case). The Act creates a specific period of grace for application, once use 'as of right' brought to end. This is 5 years for 'old' cases; 2 years from now on.

But what if houses etc were built 3 years ago? It would clearly be a nonsense to allow registration. So if construction works begun before 23 June 2006, any land that will be permanently unusable for recreation, under same planning consent, can't be registered. Other tidying up, for example of the criteria, is also included. Statutory closures for animal health etc do not reset clock for 20-year claims and once 20 years' use as of right is achieved, just giving permission isn't deemed to bring the use to an end. There needs to be a formal challenge.

There is also capacity for the voluntary registration of land as green, which has never been possible in the past! This requires the consent of any leaseholder/chargeholder. Even a common could be dedicated. None of this takes effect until commenced by regulations. Re-application in cases of unsuccessful TVG applications may then be possible where they meet the new criteria. The Act ensures that there are more chances for 'genuine' cases to succeed, wherever they occur including in cities – but as mentioned, with specific protection for existing developments.

CHAMPIONING THE COMMONS: PRIORITIES FOR ACTION

Graham Bathe *English Nature* and **Buddug Jones** *Countryside Council for Wales*

England

Section 1 of the Natural Environment and Rural Communities (NERC) Act 2006 stipulates that a new body is to be formed ' known as Natural England'. This will be formally established on 1 October 2006. Creation of the new body had first been announced in the Rural Strategy 2004 and described as a single integrated and independent agency. It is made up of:

- all of English Nature;
- the landscape, access & recreational elements of the Countryside Agency;
- the environmental land management functions of the Rural Development Service of Defra.

The NERC Act 2006 specifies that Natural England's purpose includes:

a) promoting nature conservation;

b) conserving/enhancing landscape;

c) facilitating understanding and enjoyment of natural environment;

d) promoting access/recreation;

e) contributing to social/economic well-being through management.

These functions tie in very closely with the public values of common land. For example:

- 55% of common land in England is designated a Site of Special Scientific Interest;
- 31% falls within an Area of Outstanding Natural Beauty;
- 38% of open access land is common land.

Section 3 of the NERC Act indicates that contributing to socio-economic well-being may be carried out by working with local communities. We must not lose sight of the fact that commons were, and in many places still are, fundamental parts of rural economies. The principles of common-land management, founded on long-standing experience and practice, have supported communities financially, and provided a focus and structure to rural management. We lose such knowledge, experience and structures at our peril. In order that we retain this capacity, Natural England will work close with the communities involved in managing such areas.

The best way to conserve the special features of common land is through partnership.

The management of common land will clearly be affected by both the Commons Act and the NERC Act. Following parliamentary debate, Natural England's Chair, Sir Martin Doughty, agreed that we should:

- be public sector champion of common land;
- have a central role implementation (parts of) the Commons Act 2006;
- lead in establishing commons councils;
- focus on the sustainable management.

In August 2006, it was also agreed that work on Common Land should constitute a Major Project (flagship initiative). Natural England is just beginning to formulate its work and there is a major opportunity to influence this project. Natural England will be seeking to develop a better understanding of the national importance of commons, by building a data set on:

- the condition of commons;
- commoning systems operating;
- the management of commons;
- the public interests of commons for -
  - Nature conservation
  - Landscape
  - Access
  - Community interests.

In summary therefore, by accepting its position of 'Public Sector Champion' of Commons, Natural England will be focusing on issues relating to sustainable management. Clearly the facilitation of commons councils will be crucial. It is also clear that we cannot fulfil any role of champion unless we have a proper understanding of the resource. We need far better data on commons, and Natural England will be instigating measures to obtain this, to help inform future action and policy.

Wales

As the national wildlife conservation authority in Wales CCW has a key role in delivering a number of actions and outcomes set out in the Welsh Assembly Government's Environment Strategy for Wales, which is the Assembly's vision and strategy for Wales' environment for the next 20 years (2026). Within this framework for the long-term protection of our environment, CCW will help deliver actions such as bringing designated sites into favourable or recovering condition, setting priorities for landscape scale projects in order to build up the resilience of biodiversity to adapt to climate change, refocusing and targeting agri-environment and other management schemes in Wales' Rural Development Plan to deliver environmental priorities, and developing best practice for sustainable public recreation.

Common Land covers over 8% (173,366 ha) of the total land area in Wales. The importance of commons to nature conservation in Wales is demonstrated by the fact that some 45% of our common land area is designated SSSI. Our commons are therefore particularly relevant to achieving the above Environmental Strategy actions and outcomes, not only on designated sites but also in the wider countryside.

CCW has a key role in advising the Welsh Assembly Government in taking forward provisions within the Commons Act through providing advice and guidance on the proposed content of regulations. We have just commissioned a study to scope the condition of the registers in Wales with the aim of estimating the resources required to bring them up to standard. This will involve investigating the feasibility and cost of digitising the registers. We will also be investigating how and where Statutory Commons Councils might be established. There are several good examples of how we might approach this in Wales; one example being the Rhaglen Tir Eryri, Objective 1 funded partnership, which includes The Snowdonia National Park Authority and CCW and involves, among other things, the sustainable management of Aber and Llanfairfechan commons.

THE HERITAGE OF COMMONS AND VILLAGE GREENS

Graham Brown *English Heritage*

Commons and village greens have been an important element in the mental concept and physical lay-out of English towns and cities since the Middle Ages. They are often believed to have served in the past exclusively as grazing land where livestock could wander freely (giving rise to another widely used term: 'stray'). But they were in fact intensively used for all manner of activities, from agriculture to industry, from military training to merry-making.

Like many medieval parks and later gardens, the creation of some commons served to protect much earlier archaeological remains. Today, commons are still part of the open landscape, very familiar to local urban populations as well as many rural areas. Within urban settings they are often regarded as green spaces whose value is primarily ecological, or for leisure activities but as so often happens some are now at risk from the threat of urban expansion. Despite this, urban commons have remained neglected in terms of research by historians and archaeologists.

The Urban Commons Project, funded by English Heritage, commenced early in 2003. The first stage was a small number of exemplary field investigations and detailed surveys carried out by English Heritage's Landscape Investigation Team, designed to illustrate the potential archaeological interest and importance of urban commons. Our interest in carrying out this research stems from an investigation undertaken in 1995 of Newcastle-upon-Tyne's Town Moor, which recorded two probable prehistoric settlements as well as evidence of mining, cultivation remains and traces of the 18th-century racecourse, all within a mile of the modern city centre. And all virtually overlooked by archaeologists, historians and those involved in the urban planning process.

Fieldwork for the Urban Commons Project began with investigations of the West and South Commons at Lincoln. Over the summer of 2004, we examined commons in York, Beverley and Doncaster. Fieldwork on Walmgate Stray, in York, revealed several lines of trenches, where soldiers would have practiced for fighting in the mud of the Western Front. At first, we were baffled by a curious series of humps and bumps beneath a line of trees. It was not until a tenant of one of the gardens on the adjoining allotments recalled the existence of a Second World War army assault course, hidden from the air by the overhanging branches, that the penny dropped.

The investigation of the five ancient commons of Beverley, in the East Riding of Yorkshire, has also been carried out. In the past, burial mounds dating to the Bronze Age and Iron Age have been identified on the largest of the town's commons - the Westwood - and an early photograph shows a long-forgotten First World War airfield on the site of the modern racecourse.

This is just one of a number of projects undertaken by English Heritage's Landscape Investigation Team to improve the understanding of the historic environment throughout England. Many of these cover significant areas of common land such as the Mendip Hills, Quantock Hills and Malvern Hills as well as sites in the South Downs. These national and regional projects aim to provide the accurate information necessary to advance both academic debate and practical day-to-day conservation work. To achieve the breadth of coverage we want, we often work closely with colleagues who are experts in other techniques, especially the Aerial Survey and Historic Buildings teams. Each of our thematic national and major regional research projects generally lasts between 3 and 5 years, and usually results in a major publication. For more information please visit our website: www.english-heritage.org.uk/server/show/nav.1197.

1. OPPORTUNITIES WITHIN THE COMMONS ACT 2006

GREENS REGISTRATION

Nicola Hodgson *Open Spaces Society* with **Paul Johnson** *Countryside Agency*

Introduction
It is too simplistic to say that the Trap Grounds case has solved all the problems. Section 15 within the Commons Act 2006 is very different from the original clause. In some ways useful; in other ways problematic. There are issues surrounding 'periods of grace'. Section 15 is still to be commenced. When it has commenced, it will apply to all new applications. Existing applications will be covered under existing legislation.

In relation to construction works there are problems concerning the difference between 'the works have commenced' and 'the works proposed'. Anyone unsure about the implications were advised to look on the Defra website.

Issues
The workshop addressed four key issues resulting from the Bill:

- Locality;
- Significant use;
- Old or new law – 1965 Act or 2006 Act;
- Construction works.

Locality
Under the Commons Act 2006, the concept of 'locality' ceases to be critical. The concept of 'neighbourhood' means that the need to identify an administrative area that constitutes a locality is effectively removed. It is now sufficient for the application to draw a line on the map around a group of houses that are said to constitute the neighbourhood for the case in question - a defined area in which they live. It is then necessary to prove that a given number of people living within that area have used the prospective green in question in a qualifying way over 20 years.

There followed some discussion about the application form, especially the need for it to make the relationship between locality and neighbourhood clearer. It was noted that the form has not been updated for years and was often seen as overly complex as it is. It was noted that this could form part of the consultation.

Section 15 of the Commons Act 2006 will come into force as soon as possible. There is a commencement date possibility of April 2007. The Welsh Assembly Government will decide the overall position and timing of commencements in Wales.

Significant Use
This aspect of TVG applications was first introduced under the Countryside and Rights of Way Act 2000. This terminology was left in the 2006 Act: it was deemed to be 'fit for purpose' as it means what it says. The significance of the amount of use is judged in relation to the size of the locality or neighbourhood involved, whether the latter is 10,000 people, or 500 people.

Old or new Law: 1965 Act or 2006 Act
If an application is in the system, then by definition it must be determined under the 1965 Act. Note that the 1965 Act was amended by CROW. This will be the case even once section 15 of the Commons Act 2006 has commenced.

If there is a problem for the applicant under the 1965 Act, then it may be that they are able to apply under the 2006 Act subsequently. However, it is not always so straightforward to withdraw an application. Courts may be concerned about whether it is in the public interest to allow the application to be withdrawn. For example, it could be that an applicant was effectively bribed to withdraw their application.

Construction Works – Section 15 (5) (c)
Under the 2006 Act land is exempted from registration if:

- planning permission was given before 23 June 2006;
- construction works had started before 23 June 2006;
- the final effect of the works will be to make the land permanently unusable by the public for lawful sports and pastimes.

The example was then given of a 100 house development, of which only two houses had been built at this stage. Under this example, the remaining houses would be allowed to be built, and no subsequent registration would be possible. However, if there was an open area in the centre of this development that was to remain 'open', then it might still be appropriate to register this open area as a green assuming it had received qualifying use in the past.

Some found the notion of 'construction works' ambiguous, but Hansard was said to clearly describe what it meant and that people should refer to Hansard for clarification.

Some in the workshop described Section 106 Agreements as 'toothless'. However, planning authorities could say to developers that certain areas of their scheme should be registered

as a village green (under the 2006 Act, which allows for voluntary registration). This would provide stronger protection than a section 106 Agreement, because the latter can be unmade in the future.

The notion of 'permanently unusable' under the 2006 Act and its relationship to construction works elicited considerable debate. For example is it an open green area, or an unfenced front garden in a housing development - which is becoming increasingly common? Or is it just referring to a particular building's curtilage? Again, reference to Hansard was considered relevant in terms of resolving this ambiguity.

Discussion

Q. What happens if there is an application for development and then a new application for a village green?

A. These are two separate and distinctive things that will be considered separately.

Q. A village green was registered under the 1965 Act. What happens if there is then an attempt to deregister part of it? The issue was someone parking on a track. Could the parish council deregister this small section of the green to allow the person to park.

A. This was felt to be 'highly unlikely'. In the past, it was strongly argued that it was impossible to deregister a green. Under the 2006 Act, in particular circumstances, it was suggested that it may now be possible and 'statutory exchange' is still relevant. Under sections 16 & 17 of the 2006 Act there are voluntary provisions and they must be appropriate in terms of public interest. Schedule 2 of the 2006 Act suggests that wrongly registered greens may now be considered for deregistration, but only in particular circumstances. Paragraph (5) relates to swapping a common to a green. Paragraph (8) deals with buildings registered as a green. Paragraph 9 allows removal of other land that may have been incorrectly registered as a green, but only in tightly constrained circumstances.

Q. Can you register highway land as a village green?

A. This elicited considerable debate. A right of way over a green was described as being equally a highway as a motorway. The idea that highways can only be used for passing and repassing. A solicitor present in the room gave the example of a case that had failed. The idea that it was unlawful to play ball games on a highway; therefore, can't have a village green on this basis. One of the barristers present felt strongly that 'highway land is not registerable', although he did suggest that it was difficult to predict what the courts will do. Even where a village green-like space has a highway across it, a barrister felt that it would still not be registerable -- but he again conceded that this was a point for subsequent debate in the courts.

PROTECTION OF COMMON LAND

Elaine Kendall *Defra*

The workshop covered three main aspects of the Commons Act 2006, namely:

- Sections 16 & 17 of Pt 1
  - Exchanges of common land and greens;
- Section 38 to 44 of Pt 3
  - Works on commons (s38)
  - Exemptions for certain types of consents (s43)
  - Enforcement against unlawful works (s41)
  - Schemes of regulation (s42);
- Sections 50 & 55 of Pt 4
  - Schemes of regulation (s50)
  - Other SoS functions (s55);
- Charging for the service we provide.

Defra is looking for good public involvement via consultation, with implementation by 1st Oct 2007.

Works on Commons

The workshop discussed who has responsibility regarding works such as fencing on common land. In terms of responsibility:

- Ring fencing, or fencing against the common, is the responsibility of the surrounding landowners, where they want to keep stock out. There is a widespread view that owners of land adjacent to commons are under a duty to fence against the common (i.e. the fence would be on the non-common land);
- within the common, it is the responsibility of the landowner or commoners or others acting with their agreement.

The new consents procedure includes a provision for exempting certain works from the need for consent, but the exact criteria are to be consulted on. Participants at the workshop felt that many people want to use electric fencing and see this as being temporary, so Defra needed to address this. It was also felt that the application process may be costly and time consuming to follow, and so needed to be thought through clearly and there was a need for clarity on what is/is not legal as well as what is practical. Defra said that this had yet to be determined, and there were a range of situations and views to be considered. These will be addressed in the consultation paper to follow later in the year. The workshop accepted that people have different objectives but all must work within the law and how law is interpreted can have major ramifications.

Defra indicated that it had always been difficult to precisely define which works required consent, and which would be exempt. However, they are aware that it is important that any guidance issued is clearly worded in order to ensure that good things happen and bad things don't. Defra was currently considering the scale of possible exemptions, and intended to seek views in the consultation paper.

The issue of how people may challenge decisions or enforce actions was discussed, including who people could appeal to. A decision by Defra on an application is challengeable by judicial review. Enforcement action is changing as under the new Act ***any*** person can take enforcement action against unlawful works whereas previously the power lay with certain bodies.

Unlawful Works

Defra stated that they intended issuing guidance on enforcing against unlawful works. Although the new Act did not impose a duty on local authorities to take enforcement action, they will continue to have discretion in such matters, and clear guidance should ensure that local authorities are fully aware of their responsibilities in respect of common land.

In terms of encroachment, if planners regard any action as being covered by a planning constraint, then planners will act under planning legislation. Where there is no planning breach, then it was hoped that the planners would alert the perpetrators to the need for consents under other legislation (such as the Commons Act 2006). Defra are looking at possible ways of the s38 consenting process interacting with other consenting processes like planning applications.

Overall the workshop felt that proposed guidance on enforcement needed to be more specific and proactively developed. For example an independent arbitrator might help. Defra wants to encourage local authorities to make more use of their enforcing powers, and is considering the case for including in guidance some suggested priorities for action. In doing this, however, they do not want to create the impression that more minor infringements are unimportant. Some felt that there needs to be greater power for enforcement, especially given that local authorities will do their best to avoid legal action.

Some felt that Natural England should be encouraged to make enforcement one of it's priorities. Some local authorities, such as Bath and North East Somerset, have an enforcement officer (who is also a public rights of way enforcement officer). However, taking legal action can be difficult for a small council.

A representative from a parish council cited an example of a landowner building a road across a common (clearly in breach of the protective legislation) – the council had taken the individual to court and had still achieved nothing after six years. In this case, it was claimed, all other local residents were waiting to see the outcome of the court proceedings and, if the council loses the case, will no doubt build access ways of their own across the common. In such cases parish councils clearly need help.

Enforcement is a power, not a duty and the new Act has not changed this. Many authorities do not use their powers in this area of law. It was claimed that Surrey County Council chooses to enforce rules on commons that it owns, but not on others. It was felt that Defra needed to give clear guidance on this but must reflect what is actually in the law. If Defra asks the local authorities to take more enforcement action, they will want resources to do it.

Another area of confusion is whether physical enforcement action (e.g. ripping up the track) could be criminal damage. It is difficult for a parish council to know what it legally can and cannot do and is not well placed to take risks. Another view, in a similar situation, was that it was the construction of the track that is criminal damage, not its removal. In such cases Defra is unable to give legal guidance, only informal advice.

Emerging ideas for consenting regime process
Defra is still developing its proposals for the new consenting regime and will be consulting on them.

There was some concern that by charging for consents, at a time when breaches are not easy to enforce, people will go ahead without seeking consent. Defra's view is that there are means of enforcement through the Act but in addition other clearances may assist in preventing unlawful works. For example, not having legal consent for a road over a common to access a property may impact on the ability to get a mortgage over or sell that property.

The notion of 'improving the commons' as set out in section 39 of the Act was discussed. It clearly needs criteria and definitions as three different people will have three different views. Defra is aiming for the new application process to be more transparent and open to all for comment, so that a local consensus can be reached before an application is submitted to Defra. It will be important that an applicant sets out a strong case as to why the proposed works are beneficial. Defra will give some guidance for prospective applicants on these matters, but the decision on whether or not to go ahead with a section 38 application must ultimately rest with those proposing to carry out the works.

Defra are proposing that applicants will submit a comprehensive application containing all necessary supporting documentation and a strong supporting statement. If insufficient information is received, Defra would just return it and advise the applicant to supply the missing information, rather than reject the application. The nature of the process beyond the receipt of the application would depend on whether there were any objections. The focus is on communication and mediation between the applicant and interested parties. Applicants may be expected to conduct the public consultation on their proposals for works (i.e. applicant will advertise the proposal, not Defra).

Is there a danger that people might undertake works on a common and then only apply for consent (retrospectively) when they 'get caught'? Defra accepted that this was a risk, but pointed out that there was a real risk of offenders falling foul of the enforcement procedures. It is not Defra's intention to make use of the enforcement provisions itself.

Application Process
Defra's proposed application process provides an indicative timetable for each key stage and the different routes that may be followed – rejection, consideration based on papers submitted, whether more info needed, whether inquiry or hearing needed, site inspection etc. Whether Public Inquiry, Public Hearing or site visit was chosen would depend on such matters as complexity of issues and extent of interest; some applications would be decided on paper evidence alone. The criteria Defra propose to use under the new consenting regime would be set out in the consultation paper. However, the decision on whether or not to hold an inquiry is always likely to be a value judgment to some extent.
In terms of charging, there is the possibility of a step-by-step charging approach – i.e. an initial fee for assessing the application, costs if a site inspection was needed, costs for a Public Inquiry or Public Hearing if either was necessary. Each component may be subject to a standard charge, rather than varying from case to case as this avoids costs accruing out of control. Defra hoped that many agricultural applicants would follow an easy route (i.e. benefits to common are clear, there was no opposition to the application, and consent could be granted without the need for public inquiry. However, there was not wide support for this within the workshop. It might be worth considering using the same system as that for rights of way, with a payment/costs award system, as well as a right of appeal.
Where someone wished to de-register common land or village green under section 16 of the new Act, the exchange land offered should be just as good as the land to be de-registered, if it is to be accepted as part of an application – but some felt this would be hard to achieve.

COMMONS COUNCILS

Marian Jenner *Defra*

Introduction
In terms of tools to help manage commons, the Commons Act 2006 provides:

- powers to establish self-regulating statutory commons councils;
- a power for Defra/NAW to deal with unauthorised agricultural activities;
- a ban on severance or rights (with exceptions).

The purpose of developing commons councils is to enable those who manage commons to be able to work together to manage agricultural activities and the vegetation to meet the varied demands made on common land across the country. The formation of commons councils would also assist those who wished to enter into agri-environment schemes. The function of commons councils is limited to the management of agricultural activities, the vegetation and the exercise of rights of common (e.g. the letting of common rights and hefting requirements).

The workshop then considered three important areas relating to commons councils, to help Defra develop its policy on how councils might work in practice:

- size of a commons council;
- scope of council powers, membership and representation;
- the costs of establishing a commons council.

Size of a commons council
The workshop discussed the ideal size of a commons council. The group considered the two extremes, i.e. whether they should exist for a single common or be larger umbrella-type bodies covering a number of commons.

Most agreed that having a larger number of small councils would not be the best way forward, given the expected costs and bureaucracy in establishing and running councils. However, delegates also agreed that it would not be helpful to make this a blanket rule across the country. There may be a few large upland commons that would be best represented by their own commons council. Some delegates felt that each county could have a commons council made up of members from every common, with payments of small fees to provide funding. However, a more landscape scale approach was suggested using the Chilterns AONB as a possible model, with 208 commons. In many cases an area-wide council would be better placed to deal with key issues than lots of small councils – particularly in being sufficiently removed from difficult issues between commoners (or landowners) that local people might find difficult to deal with directly. A member of the Gower Commons Association suggested that although they covered 23 commons, the general feeling was that they were not large enough to deal with the issues they expected a commons council to deal with.

Obviously an alternative approach would be needed in counties where there are few commons. Again it was felt that Dartmoor could be used as a potential model. Some delegates remained

concerned that umbrella level commons councils would not work effectively at the local level. The intention of commons councils is to ensure better management of commons, so it may dilute this and render them ineffective if commons councils were too distanced from management of a common. Defra also queried what added benefit 'umbrella' type councils would actually add – and suggested it might be extremely difficult to obtain 'substantial support' from such a large number of commoners and landowners. Where the principal interest was to deal with the 'rogue element', there needed to be a strong level of local monitoring and negotiation so it might not be beneficial if the commons council is too far removed from local issues. All agreed that there was a need for landowners to be involved in commons councils.

Defra confirmed that they would not be adopting or encouraging a single approach to establishing commons councils as the workshop clearly showed the wide range of views and felt it would need to be determined locally rather than imposed from the top down – i.e. 'horses for courses'.

Scope of Council powers, membership and representation

The second main issue covered the scope of a council's powers and the membership of a council. This was important as the granting of statutory powers also meant that the commons councils had certain obligations to act in the public interest.

The role of a member of a commons council was clarified as representing a specific interest (e.g. landowners or common rights holders). Only individuals could be elected, as opposed to a voluntary association being elected in its own right – although individuals could, of course, stand for election on the basis that they represented a particular group of people (such as a voluntary association).

Delegates were also interested in the role of local authorities, especially if involved in the formation of umbrella groups. They also requested more detail on the issue of 'substantial support', which Defra/NAW need to be certain exists before establishing a commons council. The issue of whether a statutory body (such as Natural England) should be allowed to be a member of a council was also raised.

It was stressed that there was no need for a successful and effective voluntary association (or any other management structure on a common such as courts leet) to become a statutory commons council if they did not wish to – and that in many cases there would be no benefit for the additional work involved.

The costs of establishing a commons council

Defra stressed that overall resources to assist in the establishment of councils would be limited. As with all public money, Defra would be looking to satisfy its wider priorities in terms of public benefits, such as the enhancement of designated sites through improved management of the common.

It was suggested that councils should be established for practical management purposes, and not just where agri-environment agreements were being established. The need was for powers to make people manage a common properly, for example, to control diseases such as scab, gather animals in and clear the common when needed.

There was some concern that the Commons Act did not provide the necessary powers to enforce rules. Defra clarified that this was incorrect, and that the ability of councils to make binding rules (with criminal penalties where appropriate) was in fact one of the main advantages of statutory commons councils, and was a key recommendation from the stakeholder working group prior to the Commons Bill being drafted. A representative from the RDS stated that setting up agreements on Dartmoor had been facilitated by the existence of the council. The existence of an overarching body capable of establishing rules and regulations made the work of establishing agri-environment agreements much easier.

TACKLING MISSING AND WRONGLY REGISTERED COMMON LAND

Hugh Craddock *Defra*

Introduction
Schedule 2 to the Commons Act 2006 enables the rectification of mistakes and omissions in the registers compiled under the Commons Registration Act 1965. It will, when it is brought into force, enable application to be made to remove certain land from the registers (to 'de-register land'), and to add land to the registers.

The workshop focused on two of these provisions: paragraph 4 (registration of waste land of the manor) and paragraph 7 (de-registration of other land wrongly registered as common land), outlining how paragraphs 4 and 7 are intended to work, and considering 8 questions.

1. Are people aware of any land that they think might fulfil the criteria?
Views varied amongst the delegates but most were aware of land that would be investigated against the criteria to see if further work would be appropriate. Most examples concerned tackling missing registrations, but examples of wrongly registered land were known.

Wrongly registered — highway land and highway verges were mentioned, although it was unclear whether such land, once registered, was 'wrongly' registered.

Missing — some land was never part of a manor, so could not qualify under paragraph 4. It would be difficult to establish whether land fulfilled the 'waste land of the manor' criterion. There was relatively low interest in correcting past omissions from the registers.

2. Are there clusters of such cases?
No clear consensus appeared here but it was felt that those local authorities with large registers were likely to see more activity that those with smaller registers. It was suggested that clustering occurred sometimes round the fringes of common land, and particularly in the Lake District and Cornwall.

3. How could we identify the scale of these nationally?
Very difficult to determine but those areas with larger amounts of common land and town and village greens expected to have activity in the 'tens' compared to those with small amounts where one or two might arise.

4. Should public bodies (Defra, local authorities, Natural England) or NGOs try to identify and advance relevant cases? What are the implications (good and bad) if they do?

Overall — whilst it would be helpful for public bodies to advance both missing and wrongly registered land, the resource and financial implications would need to be properly considered.

Missing — perhaps such cases could be centrally funded and NGOs could research and identify such sites and could pass onto authorities for processing.

Wrongly registered — no real public interest in de-registered common land. Whilst the public need to be made aware that they can de-register common land, care should be taken to ensure that they are not actively encouraged to de-register land that is unlikely to meet the strict criteria. The focus should be on ensuring the quality of the registers and that this is likely to be the last opportunity for private individuals to clarify the status of land they own. No public money should be spent on de-registering.

5. What importance do we attach to this area of work? Do we wish to encourage it (how does it rank alongside other priorities, such as developing electronic registers or setting up commons councils)?
A key aim of the legislation was to ensure the quality of the registers, but not as vital as electronic registers or commons councils. CROW highlights anomalies with registered land. From the private individual's point of view de-registration should take precedence over registration due to the negative impact on peoples' livelihoods (e.g. the price of a farm is adversely affected by the fact that part of the land is wrongly registered common land).

6. What scale of evidence might be required to support applications, and how would it be adjudicated?
After a basic set of evidence it is not easy to say what scale of evidence would suffice as the one-size-fits-all approach doesn't take account of unique local circumstances. So flexible guidelines would be preferable to strict criteria. The bullet points provided in the workshop sheet provide a good basis. It was suggested that:

- clear historical evidence was central to application but this was easiest where that had been a Commons Commissioner's decision;
- guidance in locating historical evidence where there had not been such a decision would be helpful;
- clear criteria for both missing and wrongly registered land required to avoid wasted effort.

7. Should fees be paid for applications?
Consensus was for a 'yes but'. Key reservations were:

- Who was covering the cost of the Commons Panel? If it was the local authority then this would be passed on to the applicant;
- the better the guidance the better the applications and the less time required for checking the evidence before placing in front of the commons panel. However, the time taken to check applications will have to be covered somewhere;
- if newspaper adverts have to be placed the cost will need to be recovered from the applicant;
- level of fees will determine the outcome, if too high less likely to meet target of 'accurate registers'. If too low may receive 'hopeful but doomed' applications.

8. Should an unopposed application be determined automatically in the applicant's favour?
All agreed that this was not a good way forward. All applications should be remitted to the Panel, and the outcome should depend on the quality of evidence.

EXPERIENCES WITHIN THE WELSH COMMONS FORUM

John Thorley *Welsh Commons Forum/National Sheep Association* and
Peter Lanfear *Gower Commoners' Association/Welsh Commons Forum*

Introduction
The Welsh Commons Forum (WCF) was developed as part of National Sheep Association, with the intention to create a body that can help commons associations and commons councils. WCF's objectives are to be the best organisation for dealing with common land issues and serve as an interface for all relevant interests. The Gower Commoners' Association has already acted to create benefits for its members and it was thought could be a useful template to copy.

WCF has had an input into the development of the Commons Bill as it progressed through Parliament, such as getting the name changed from associations (statutory) to councils. Overall, the view is that the Commons Act creates a good opportunity for agriculture (and active commoners), as well as environmental benefits.

Forming a Commoners' Council
Apart from the issue of cost, it was felt that there was no reason why a voluntary commons association should not become a council. They would have to apply like any other group of commoners, but would also want to ensure that it was justifiable on cost grounds. The exact cost of running a Commoners' Council (CC) was not clear. Some suggested figures of £45-50,000

For example, in Gower they have a network of 25 commons under one association but this may not be sufficient to form a single CC. There were many benefits of several commons working together under a single CC. This included the prospect of a slightly more remote authority enabling better controls to be exercised in a situation where a commoner was unduly coercive in a selfish way against the best interests of his neighbours. Acting cooperatively gives opportunity to access skills (e.g. fund raising) that smaller commons associations could not achieve.

Umbrella groups and Commons Councils
Need to discuss this with individual groups and see what they think. WCF sent out questionnaires to all commoners associations about whether WCF was needed and 38% replied, all of them positive (note that these 38% cover multiple commons, not just single ones).

WCF contacted the Federation of Cumbrian Commoners for guidance and this model served as a modus operandi. The WCF/umbrella body intend to look at Commons Councils separately and ensure these are flexible enough to meet local needs.

Using the new Act as a focus, it might be more appropriate to have an umbrella group made up of all the CCs within a region. The key aspect is to avoid labels and develop a structure with a single voice for commoners in a given area, such as Wales. Policy is still evolving.

Powers
The key concern was for power to rest with the CC so that rogue graziers were finally subject to regulation. 'Rogue grazier' was taken to mean someone with entitlements to graze but who is doing so outside the agreed rules (presumably against the best interests of the common and the other commoners). It was important to make it clear that this was the case irrespective of whether someone was supportive of the Council. There needs to be clear guidance on this point so that everyone understands who has powers, how they can be exercised and who would be the party to take action. This might involve an arbitrate as in Dartmoor.

Agri-environment schemes, such as Tir Gofal, may fail if a rogue grazier refuses to reduce his stocking rates below his legal rights. In existing schemes where there is an adjustment other commoners have to absorb the overshoot in order to continue without penalty. It would be important for CC to have power to instruct someone to reduce the number of rights they exercise in order to achieve mutual benefit for all commoners exercising their rights.

Some within the workshop know of complications and possible anomalies, such as in Wales where common land may be owned by a company but not all rights holders are within the company. As ever persuasion is always going to be better than force.

The feeling was that progress can be achieved through democratic procedures and persuasion, rather than legal action (last resort). The key point is that we are entering a new era of management, and this gives opportunities – particularly in agricultural management.

Membership
In addition to commoners, it was generally agreed that the landowner would be a member of the CC to aid joined up working.
The area of over-registration of rights was discussed and while many felt action was necessary it was felt by many that existing economic pressures may be sufficient.

Key Issues
The ***cost*** of CCs means that a critical mass is needed to reach economies of scale but the point at which the critical mass is reached is important but as yet unknown. Research is underway and this will help identify if there is also a role for a national body of some sort.

Powers for the CC is critical. CCs need powers to be able to regulate the rogue grazier who is exceeding the rules but within his grazing rights. Someone has to act, using arbitration methods where they are available. There is a need to ensure everyone understands how the system is intended to work.

Every common is different and care is needed to avoid generalising over management practices and structures.

MANAGING LOWLAND COMMONS

Jenny Phelps *Cotswold Conservation Board*

The Cotswolds Conservation Board has been working in partnership for 4 years toward the sustainable management of the commons[2]. The main focus of this approach is how to deliver on the ground the sustainable management and protection of common land, many of which are Sites of Special Scientific Interest.

The Cotswolds Conservation Board's Caring for the Cotswolds Project is a 5 year project supported by the Heritage Lottery Fund (HLF) to deliver 4 main objectives, one of which the sustainable management of 1/3 of Cotswold limestone grassland sites by the end of the project. The others refer to dry stone walls, locally distinctive features and interpretation. Having a dedicated Grasslands Project Officer to deliver sustainable management has shown how a partnership approach involving working with, supporting and engaging communities can deliver multiple objectives [3].

Strategy

The Project identified that it was necessary to have a strategic approach to partnership working and community delivery and as a result the Cotswold Limestone Grassland Strategy was produced, supported by English Nature and The National Trust. The Strategy can be downloaded at **www.cotswoldsaonb.org.uk/files/uploads/GrasslandStrategyFinal.pdf**

Why do we need a strategy for grasslands?

Limestone grassland is a priority habitat (nationally, regionally and locally) and the legislation regarding its protection has been radically changed under the Countryside and Rights of Way (CROW) Act 2000[4] as well as the new Natural Environment and Rural Communities Act 2006[5]. Many of the commons in the Cotswolds are Sites of Special Scientific Interest for limestone grassland and may also have other statutory designations, including protection of geological features, historic environment, landscape national trials, common land and rights of way. The grassland may be primarily used for agriculture but often commons support a multitude of recreational activities such as walking, riding, mountain biking, quiet enjoyment etc and are now open access sites under the CROW Act 2000.

Problems with protective legislation

Although it is essential that there is a framework of legislation to protect grassland sites and their associated features, there is a risk that statutory protection becomes unintentionally responsible for disengaging the traditional management of sites through local farming (usually commoners).

Landowners, such as the National Trust and Wildlife Trusts, and statutory bodies responsible for protection, have sometimes adopted the management responsibility. These organisations are aware that consents are required for works on scheduled monuments, SSSIs and so inform others that this is the case. Local people are made aware that they cannot carry out works without consents, with lists of operations likely to damage. This can prevent people who live in the immediate community from carrying out traditional management tasks. However, they often have the knowledge, skills, resources and time to manage the sites more sustainably. It is not unusual for the organisations responsible for the protection of sites to be stretched financially and as common land is legally complex and involves varied stakeholders, commons can become neglected and overgrown. This is unsettling to the local community who have historically looked after them.

In the past 50 years farming and conservation had diverged into two separate disciplines active in the countryside. In recent years, partly through the agri-environment schemes, there is a return to shared ground, where the protection of the countryside is being put firmly back in the hands of the farming community. This is a key element of the Cotswolds Limestone Grassland Strategy, where supporting livestock farming is seen as being the key to the sustainable management of priority habitat.

Innovation - structured, supported local delivery.

The Caring for the Cotswolds Project has demonstrated an innovative approach to delivering sustainable management of grassland sites. Instead of looking at the protected sites, the project looks at what surrounds the site and the resources within its immediate community. For example the strategy indicates that managers should look at the adjacent land use and the opportunity for linking vulnerable areas to less important grassland to create viable units. It also looks at the farming community as the key to delivery and how livestock farming can be sustained and re-engaged in the protection of the local environment. In relation to common land it seeks to sustain the livestock businesses of the commoners, as without them there is no sustainable future for that area of common land.

[2] A case study fact sheet which outlines the project outcomes is available as a pdf at **www.cotswoldsaonb.org.uk/files/uploads/CaseStudiesFactShee.pdf**

[3] A fact sheet has been produced on how to project plan, select a suitable Project Officer and structure community lead delivery. This can be downloaded at www.cotswoldsaonb.org.uk/files/uploads/CommsLime.pdf

[4] see www.opsi.gov.uk/acts/acts2000/20000037.htm

[5] see www.opsi.gov.uk/acts/acts2006/ukpga_20060016_en.pdf

Through the Project, help is offered to farmers regarding Defra schemes as well as planning issues, diversification, direct marketing of local produce and including conservation grazing within their advertising and thus adding value to their products. Other individuals within the community are also highly valued as they may offer a variety of skills and interests that can contribute to delivering the projects.

The Limestone Grasslands and Communities Fact Sheet referred to earlier includes a 'blue print' that outlines partnership working between multiple agencies, organisations and the local community. The project has demonstrated that with support, communities are not only capable of looking after their own local environments, but are best placed to do so. The Cotswolds Conservation Board now demonstrates and promotes how the untapped resource of people can deliver the objectives of statutory organisations through partnership working.

Key elements to the Strategy

Communication

Engaging communities requires certain interpersonal skills and an understanding of what motivates and de-motivates people.

The Project has always taken the same approach that is based on the simple assumptions of human nature.

Assumptions

- People are protective of their local environment.
- People become anxious if that environment is changed, particularly if it is imposed.
- People don't like to be told how to do something they know already by someone with less local knowledge.
- People don't like to be excluded.
- People want to help but don't know how to go about it.

Suggested action

- Engage the energy and enthusiasm of local people by offering a project to the Parish Council, not imposing it.
- Invite all parties and interest groups to be involved in a management forum, structured through a conservation subcommittee of the Parish Council.
- Listen, involve and respect people's knowledge and opinions.

How to motivate?

- Create an opportunity for people to contribute where they feel valued and have a feeling of self-worth.
- Create an opportunity for people to take pleasure from giving time and effort to something they feel is worth while.
- Build a team of people that share a common goal where their roles are clearly identified through the management group.
- Create and deliver a sense of shared achievement.

By following these processes and engaging the resource of the people, key protected features within the AONB are being managed sustainably, while at the same time delivering the targets of the statutory organisations responsible for their protection.

COMMUNITY INVOLVEMENT IN COMMONS AND TVGS MANAGEMENT

Jo Chaffer *Open Spaces, Green Places*

Open Spaces, Green Places (OSGP) is a new and exciting project for Cumbria, supported by Friends of the Lake District, Cumbria County Council and The Heritage Lottery Fund. There are two main phases to the project, a planning year and a 3-year action phase.

The planning year has highlighted that Cumbria is losing (and significantly under utilising) important features of its physical and cultural heritage and a nationally significant resource, namely accessible open green spaces (both registered village greens and informal open green spaces). This does affect people's lives, especially those involved with Parish Councils, as the issues associated with these areas can be highly emotionally engaging problems. The OSGP project hopes to equip and empower communities to positively manage their open green spaces and so stem the slow, but steady decline and under use of this local and national resource.

In the Project Planning year we have completed several things:

- raised awareness of the issues and the project;
- asked people across the county about their open green space. They have told us where it is, what condition it's in and about any problems or barriers they face, what they need, and ideas they have for the future;
- prepared the Information and Community Support Services that can best provide information and support communities in managing their open green spaces;
- selected communities to work with in the 3-year action phase and how to support them in developing plans for their open green;
- digitally mapped Village Greens and other open green spaces and published this on the web (**www.cumbria.gov.uk/planning-environment/commons-registration/commons-registration-service/osgp_project.asp**) and in print media;
- a detailed plan for the OSGP project.

What is an open green space?
The OSGP has defined an open green space as 'a piece of land in or on the edge of a town or village that is important to the community'. Therefore the space may or may not be registered as village green under the 1965 Act.

From our planning year it is clear that these spaces are important to individuals and communities for a number of reasons.

(a) *culture and heritage* – they inform us about how it was to live in our place in the past and why it is the way it is. Their origin and use have shaped the physical and spiritual attributes of many of the county's settlements.

(b) *aesthetics and a sense of place* – the balance between open space and buildings helps form the character of villages or towns and contributes to what makes a place unique.

(c) *health and quality of life* – they provide important areas for informal recreation, sports and quiet contemplation for people of all abilities and ages.

(d) *social cohesion and community activity* - they are places where a community can spark community spirit as people get together to actively take part in managing their environment.

(e) *environmental and educational assets* – they can serve as important reservoirs of rich biodiversity and landscape beauty or provide important links within the wider network of green/wildlife corridors; they serve as an educational resource for both schools and informal learning groups

(f) *economic assets* - through all the above benefits, open green spaces in Cumbria may contribute to the economic activity of a community. An aesthetically pleasing, vibrant space that reflects the cultural and environmental wealth of an area is an appealing place not just for the local community but for visitors who will support local businesses through their spending power.

As well as their importance locally, Cumbria's open green spaces have wider value as it is the county with the highest number of registered village greens in England. However, as elsewhere in England green spaces are being nibbled away as surrounding homes and businesses absorb them into gardens, driveways and car parks; buildings, barriers and fencing taking up land. Moreover, litter, fly tipping, dog fouling and lack of management lead to environmental degradation and there's increasing pressure by developers.

The two key issues underlying these problems are:

- an information deficit (who owns or manages the land, what rights, responsibilities or powers do people have, what is the law). These things are extremely hard to discover. Over the county we need to know where are our green spaces, what state are they in, how do they fit into local planning policies; and
- speaking out – it can be very difficult to speak out about problems when the people involved are neighbours or friends. Communities have fallen apart over the very emotive issues around open green space.

All of these things can disempower people and leave them feeling ill-equipped to use and manage their spaces effectively and enjoyably. Not only is it difficult to protect open green space from threats, but it's also very hard to be proactive and create environmentally, socially and culturally rich spaces for all people in the community and beyond.

Who is community?
It can include Parish Council or meeting, people at Neighbourhood Forum meetings, school teachers and PTAs, children and parents, community and voluntary groups and leaders, key individuals, residents, etc.

Why work with communities?
To raise awareness of Village Greens and the issues. To gather information on local VGs. To help people help themselves. To initiate ground works and better management. To create advocates for all the above (and your work!).

What tools did we use to engage people?
PR / media campaign. Web presence: CCC, FLD and lots of links. Presentations to NFs, PCs, DA, planning policy, NDOs. Questionnaires – online (Survey Monkey), download, targeted postal survey. Mapping exercises. Workshops, Interviews & focus groups. Key informants. Hanging out in villages talking to people and asking questions! Photo competition. Resource packs for schools (KS2).

It seems like a lot of time and effort – why bother?
People get more say in how their local environment looks and feels. It brings people together. You get to understand what's important to people. It improves your (council's) image. It fits policy trends towards open government. Village Greens are better looked after. Registers are more likely to be up to date. It's rewarding and enjoyable.


THREAPLAND
PLUMBLAND 1
GILCRUX 3
BLENNERHASSET 2½
ASPATRIA 2½

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