

NEW FOREST NOTES APRIL 2007

How to build a Lyndhurst bypass

Several weeks ago, councillor Kendall is reported as having told the Lyndhurst parish council that he supports an outer route for a bypass of the village. He is also reported to have said that the Verderers would not allow such a route to be fenced. I am inclined to think that the councillor may have been wrongly quoted or misunderstood as to the latter statement, because it is so patently wrong. The plain fact is, as I am sure he is aware, that the Verderers have no power to withhold or grant consent for the fencing of a bypass. Fencing lies quite outside their control and is specifically prohibited by Act of Parliament. Section 17 of the New Forest Act 1949, under which land for an outer bypass would be taken, says clearly that "nothing in this section shall authorise the fencing or other enclosure of the land".

The labyrinthine processes which will govern any attempt to build an outer bypass do not yet seem to have been fully understood by those who support such a road or even by some of the officials who would be involved in the legal and planning phases of the work. At the risk of boring those old hands who have been through this debate several times in the past, it is worth examining the various stages once more. After all, there is a large turnover of Lyndhurst residents and both councillors and council officers come and go.

The County Council seems to be very short of money for building roads and may remain so for the foreseeable future, but let us make the assumption that it has now somehow found the necessary millions to promote and ultimately build an outer bypass for Lyndhurst. It has decided to challenge head-on all the opposing forces. In what order it will decide to take the necessary stages, I do not know, but again we can make assumptions. Firstly, it would need the consent of the landowner – the Secretary of State at DEFRA. I think it is a bit unlikely that such consent would be forthcoming, because of the opposition which would arise in later stages, but again let us take it that David Miliband relishes a big political row and promises to sell the land without a second thought. Next the County must look to the extremely tight conservation designations of the land under both national and European law. We have been told that such control can only be set aside in cases of extreme national importance and (this is significant) where there is no alternative, however costly. On both grounds it seems likely that the outer bypass would fail and that Natural England would stand firm, just as English Nature did in 1988 in the face of the same threat. At that stage the scheme falls to pieces so, if we are to follow the path any further, we must make the unlikely assumption that in a fit of weakness the conservationists and Europe throw up their hands and submit.

Having satisfied the landowner, Natural England and the European Community, the County must next, I am told, obtain planning permission, because the road constitutes development in a legal sense. The planning authority is the New Forest National Park. It is inconceivable that the officers would do anything other than give a forceful recommendation for refusal. They would have to reflect the irreconcilable conflict with the conservation

designations and the statutory purposes of parks. Moreover, they would know that the credibility of the Park as a “guardian of the Forest” would be permanently ruined if it were to back so immensely damaging a piece of development. Whether or not the Park-controlling councillors would see the matter in the same light is a far more open question. I am told by those on the inside that they would, but I remain far from convinced. Anyhow, for the sake of following the path further (if for no better reason), we will assume that the Forest is sold out by the Park or that the application is called in and approved.

The County has now vanquished the landowner, Natural England, European legislation and the National Park’s duties. What must it do next ? It must apply to the Verderers of the New Forest for their consent to the interference with common rights. Since the Verderers indicated very firmly in 1988 that they would, if asked, have refused such consent, it seems not unreasonable to assume that they would do so again. Protection of the heaths and woods and the interests of the Commoners remains the Court’s duty and the Verderers are the Forest’s primary line of defence. Even leaving these overwhelming considerations aside, the outer bypass could not be fenced. It would thus become a linear killing ground with large numbers of ponies and cattle (and possibly some people) slaughtered upon it. For this reason as much as any other the Court must necessarily refuse consent.

Not satisfied with this decision, the County must now endeavour to overthrow the Verderers’ decision and a mechanism for attempting this is provided in the New Forest Acts, but it has never been used. The highway authority may demand an arbitration. At this it must endeavour to show that the Verderers’ decision is “unreasonable”. In this context, “unreasonable” does not mean simply that the decision is irritating to the residents of Lyndhurst or damaging to the development ambitions of the authority. It means that the decision is so aberrant as to be impossible to justify on any reasonable judgement. Given the Court’s statutory duties, such a finding is impossible. So the County judged in 1988 when it chose to ignore the arbitration provisions and go direct to Parliament.

After failing to win at arbitration, the County’s next and final move, would be to promote another (probably doomed and certainly bitterly contested) private Bill.

Far more interesting is the question of an inner bypass, partly constructed on Forest land, but close to the edge of the village and leaving houses in the Queen’s Road and Southampton Road areas on the outer side. If councillor Kendall is correctly reported, he has not ruled out such a possibility and in that he is not alone. In 1988, both the Verderers’ and English Nature’s representatives, together with the amenity societies and commoners, indicated that they would accept such a proposal, subject to the provision of adequate exchange land. Whether their views remain unchanged has yet to be tested, but let us assume that they would be content with such a route. How does the County then overcome the difficulty of S.17 of the 1949 Act with its prohibition on fencing ? It could go for a short and uncontested Bill (relatively quick and cheap), but there might be an easier solution. I am told that it is not permissible to use a general provision of an Act of Parliament directly to

achieve a goal provided for by another and more specific power. One cannot therefore simply exchange land for an agreed bypass route, because doing so would be an evasion of Section 17. However, suppose the County and District Councils applied to the Verderers and the Forestry Commission for the necessary twelve acres of Forest land on the edge of Lyndhurst for a village enhancement scheme. They might build parking spaces, children's playgrounds, picnic facilities and nature trails upon it. They might, perhaps, also incorporate a new road. Such an enclosure of Forest land might be achieved under Section 19 of the New Forest Act and it could be fenced. The Verderers would require exchange land on a value basis and therefore probably much more than the twelve acres taken, but that should not be a problem.

My own estimation is that the Verderers might well approve such an exchange and that the Crown would go along with it if the Verderers approved. The National Park would be off an uncomfortable hook which threatens to blight it for years, in that it could approve planning permission with the blessing of the Verderers and the Forest protection societies. Even Natural England might, I suspect, concede the relatively small strip of partly urban land needed along the edge of the village. The motoring public would be delighted, Lyndhurst High Street and most (but not all) of the village would be freed of traffic. The County Council would have solved the insoluble and would be justly proud of itself.

We are told that the residents of Lyndhurst would not tolerate such a solution and that its adoption is therefore out of the question. It thus seems quite likely that there will never be a Lyndhurst bypass – but the petrol should run out in fifty years or so and perhaps we need not worry too much.

The Commoners' disappearing millions

At the Commoners Defence general meeting last month, the treasurer told a strange story of sudden wealth followed by shattered dreams, worthy of a Victorian novel. The Association, whose annual surplus tends to be in the region of £4,000, suddenly found itself the possessor of a quarter of a million pounds, with the promise of much more to follow. Under the latest European Union subsidy scheme, the New Forest Commoners were individually allocated significant sums based upon the number of animals they had turned out at a base date. That absorbed a portion of the funds available in respect of the whole Forest, but the bulk of the money remained unclaimed. The Commoners Defence accordingly submitted a claim for what remained and DEFRA must have thought that it was well-founded because, in due course, there arrived an advance payment of the quarter of a million pounds. There was every indication that much more would follow, running into millions over the next decade or so. Unfortunately the Association's joy was short-lived. After further thought, DEFRA decided it had made a mistake and demanded its money back. The CDA resisted until matters began to take an ugly turn and the new-found wealth was then sucked back into Nobel House.

On what grounds the reclaim was made, I do not know. I have not seen any of the paperwork and the whole story was only made public with the issue of the Association's annual accounts. I imagine it may have been difficult to demonstrate that the Association

actually “occupied” the Forest land or that it was capable of representing the commoners as a class, rather than the fairly limited group which comprises the membership. Whatever the cause, it was a sad end to a brave attempt to secure a remarkable financial benefit for the New Forest community. It was also a further demonstration – not that any farmer needs it – of the muddle and incompetence which so often governs DEFRA’s actions.

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