

## **NEW FOREST NOTES JUNE 2003**

### **GREENHILL COPSE AND THE COMMONERS' RIGHTS**

At the May Verderers' Court some rather hard things were said about the New Forest Commoners' Defence Association and its chairman in a presentment by the occupier (a Mr. Pink) of land adjoining Canterton Manor at Brook. That land, the greater part of which is called Greenhill Copse, is said by local people to be subject to rights of common. They maintain that the occupier has infringed their rights by erecting new fencing so as to exclude commonable stock. That infringement has been abated by the cutting of the new wire at numerous points so as to readmit the animals. For his part, Mr. Pink denies the existence of common rights and describes the wire cutting as criminal damage. He also takes exception to the attitude of the Commoners' Defence Association – a body whose business it is to protect the rights of commoners in the New Forest. All this raises some intriguing questions of law and Forest practice (the former too obscure for me), which no doubt some court will have to sort out in due course. Fortunately this is one controversy in which the Verderers, despite Mr. Pink's appeal to them, will not be involved as Canterton Manor is not within their jurisdiction, although it is within the New Forest. That last point could be important in deciding who comes out of this quarrel victorious as I will explain later on.

Throughout my lifetime Greenhill Copse and its associated woods have always been grazed by the commoners' ponies and cattle. Exactly when such grazing commenced I cannot say, but it was probably some time in the first half of the last century. Information from an impeccable local source is that these woods were then (and perhaps still are) owned by the Mitchells. The Mitchell family were well-known local business people with interests in property, timber and brick manufacture. They specialised in buying up portions of the large private estates in and around the Forest as these collapsed after the First World War. They would strip them of any valuable timber and then, where the land was wooded or heath, it was usually abandoned so far as any active management was concerned. By this stage the fences were usually destroyed as a result of the timber extraction. This, I am told, is what happened at Canterton Manor about the time of the Second World War. That gives more than sufficient time for the establishment of prescriptive rights of common – assuming that it is still possible to acquire rights by prescription. Informed opinion seems to be that the Commons Registration Act of 1965 effectively did away with such acquisition, but the Act does not apply to the New Forest, so it is reasonable to suppose that the old rules continue to apply here.

For those who may be confused about common land, its status and name do not necessarily mean that it is publicly owned or that the public has in the past enjoyed a right of access to it (but that is about to change). It simply means that other people have certain rights over it – in this case rights to graze ponies and cattle – and that the landowner or his tenant must respect those rights. The rights may be of ancient origin or they may arise

because the landowner has failed to fence over many years and throughout that time the land has been grazed. He is then assumed to have granted those rights to the users. This latter origin is what is claimed at Greenhill Copse. The origin of the woods, their ancient history, their conservation value, the fact that scraps of ancient fencing survive, and the fact that the woods were undoubtedly enclosed at some time in the past are all irrelevant to the present issue.

This brings us back to the subject of Mr.Pink's presentment to the Verderers which was a complaint against those he considered guilty of criminal acts. Are the aggrieved commoners entitled to cut fencing which infringes their rights ? The answer to this is unquestionably yes, but they must be very sure of their ground before doing so. If they in fact have no rights, they are causing criminal damage. I remember years ago, in another case where an owner attempted to enclose a portion of common, the legal advice to the Commoners' Defence was that fence cutting was a perfectly proper way for the commoners to proceed. The cutting should be limited to that necessary to ensure unimpeded access for grazing stock and it was desirable that the police should be notified in advance of the time and place of cutting. So far as I can see therefore, it is the extent and manner of what has been done at Greenhill which is open to criticism – not the fact that the commoners (if the activists are commoners) have sought to assert their rights. Moreover, there is not the slightest evidence that the CDA or its officers was in any way involved. The Association is actively pursuing the matter through its legal advisers.

Mr.Pink is understandably distressed that his attempted enclosure has been resisted, but presumably the affected commoners were equally distressed to discover what they regard as an arbitrary infringement of their rights. From the public's point of view, there is at stake, on the one hand, the conservation project which is apparently being undertaken at Greenhill with the aid of a Forestry Commission grant and on the other, an eventual right of access to a fine area of woodland which would presumably follow on a successful assertion of common rights. For anyone inclined to disapprove of fence cutting under any circumstances, it should be noted that two significant parts of the New Forest (Warren Plantation and part of Mays Firs) have been preserved for all of us to enjoy, simply because past generations of commoners have repeatedly cut the fences to assert their rights.

### **The Fockersperger FSP 17**

The Germans are coming to Hinchleslea Bog, or at least they are coming if Southern Electric's plans reach fruition and English Nature does not think up some good reason for blocking them. This is neither a further subtle step in the EU's subversion of the British constitution, nor an episode from some Basil Fawlty nightmare. It is in fact a sophisticated cable-laying operation using some of the most amazing machinery I have ever encountered – so far only on videotape.

Those familiar with the Hinchleslea area of the Forest will know that it is disfigured by numerous power lines. Some run parallel to the old railway and one branch leaves the Southern Electric compound west of Blackhamsley, crosses Hinchleslea Bog and terminates

near Trenley Lawn. This line is due for renewal as the poles are nearing the end of their life. The company wishes to experiment with a new German machine – the FSP 17 cable plough – which can plant an electric cable underground quickly, cheaply and with minimal damage. The old system of an open trench was, by contrast, slow, disruptive and usually prohibitively expensive. If the experiment works, the disfiguring power line will be gone for good and the possibility will be opened up of clearing the Forest of similar lines as they come up for renewal in future. The manufacturing company, Fockersperger, says that its machines will handle cables of up to 132 kv and that they are working on a machine which would bury 400 kv lines. That, if successful, would allow the removal of the massive power line which crosses the north of the Forest and of which it has always been said that burial is a technical impossibility because of the elaborate cooling system which would be required for the cables.

The cable plough is so covered in hydraulic rams that its four wheels are infinitely adjustable – up, down, and sideways and one, two or three wheels at a time. It can, for example, operate level on a slope of up to 45 degrees and can lay a cable at up to 2 metres deep. It can even cross shallow rivers. Although it is self-propelled for loading and positioning, it relies for its laying power on the FWF 40 traction unit. That comprises a vast winch mounted on a Mercedes truck and exerting forces of up to 100 tons on the cable attached to the plough. The system is like a modern version of the old fashioned steam ploughing of land, but the machines are so remarkable that they might have been lifted straight from a film set of Star Wars.

The Verderers who attended the site meeting to assess the project were enthusiastic in their support – not least because of its immense potential for future improvements in the Forest's landscape. From the electricity company's point of view also, there is a lot hanging on the experiment. They know that they have no hope of permissions from the Verderers for new overhead lines in the Forest, but underground cables laid without the damage caused by ordinary trenching, could prove to be a very different matter.

### **No apology from the Countryside Agency**

Last year in these notes I described how an elderly couple in my village had discovered that their pony paddock had been classified for public rambling by the Countryside Agency. That, of course, would have ruined its market value. To any reasonable observer, the classification was a stupid blunder and the owners of the field objected as they were entitled to do under the law. However, they had to suffer months of worry and, if they had had to employ a lawyer, would no doubt have received a significant bill – all for no fault on their part.

At the end of May they received a circular letter from the Countryside Agency saying simply that "Having considered your representation very carefully, the Countryside Agency has concluded that the land indicated is not open country and has not been shown as such on the provisional map." There was not a word of apology for the worry, inconvenience and potential expense resulting from the Agency's incompetence. This is an attitude more appropriate to the police department of an old communist country than a British agency

whose slogan is “working for people and places in rural England”. A more appropriate version might be “subjecting rural people and places to the will of government and the town”.

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