

## **NEW FOREST NOTES JUNE 2007**

### **The Minstead Manor Case**

I suppose anyone other than a lawyer might be forgiven for being confused by the Minstead Manor case which was heard in Lyndhurst magistrates' court last month. I have to admit that the many hours of complicated legal argument by the defence was way above my head. As it turned out, I need not really have worried because the abstruse points raised did not figure at all in the eventual judgement. That hinged on a straightforward interpretation of the Verderers' byelaws, but this is a story in which we need to start from the beginning – and that was nearly thirty years ago.

At that time one or two people farming in Minstead decided that they were not liable to pay marking fees to the Verderers in respect of their ponies and cattle which wandered into the Crown lands of the New Forest from a small area of common called Minstead Manor waste. That common is not within the jurisdiction of the Verderers. Marking fees are, of course, payments to the Verderers which enable them to protect the health and welfare of Forest animals by employing agisters. Agisters cost a great deal of money, taking into account salaries, vehicles, allowances, insurance and so on. The requirement to pay marking fees is contained in one of the Verderers' byelaws.

After meeting a continual refusal to pay, the Verderers reluctantly prosecuted one of the Minstead farmers in about 1980 and in due course the case ended in the High Court. There it was decided that as soon as the animals wandered into the Forest they became liable to marking fees as the Verderers had maintained. The owner was ordered to pay. That should have been the end of the matter, but sometime afterwards the wording of the byelaws was altered during a periodic review. A technical defect crept in and a later prosecution by the Verderers in 1984 failed because of it. Accordingly the Verderers corrected the defect, restoring the provisions of the original byelaws and it was then assumed that payments would be forthcoming. They were not. Due perhaps to a lack of will on the part of the Verderers, or a lack of expertise, or a shortage of funds, no further prosecutions followed for some years.

Several years ago the Verderers decided upon what I suppose modern jargon would call a zero-tolerance policy towards those they believed were deliberately flouting the byelaws. After all, if byelaws are infringed in a tight-knit community such as the New Forest, it is the law-abiding majority which suffers and, in the case of the marking fee byelaw, it is that majority which bears the financial burden. Various offenders were dealt with over the period and the latest case (I hope the last) to come before the courts involved several defendants from one farm in Minstead.

This family turns out quite a large herd of cattle onto Minstead Manor waste – a common of less than 250 acres including various road verges. Because their farm is only 300 yards from the Crown lands, their cows inevitably walk straight into the Forest on many occasions. The defendants claimed that the cows are entitled to do this because of an obscure rule called "vicinage". The Verderers did not dispute this, but maintained that as

soon as the animals cross the boundary they become liable to marking fees. If, as I suppose might just be possible in the case of an ancient and lethargic cow, the animal remains permanently on Minstead Manor, the Verderers have no concern with it. They cannot enforce health regulations or collect marking fees in respect of it. Normal fit young animals wander far and wide, although within known "runs". The defendants did not deny that their animals cross into the Crown lands, but claimed that on doing so they benefited from "free" rights in the New Forest. Various ancient charters were quoted in support of this contention, but the validity of the historical arguments was, to say the least, extremely questionable. For example, the alleged ancient grants were represented as running right through to the present day, although there is strong evidence that any claim to benefit from them had been abandoned long before the middle of the 19<sup>th</sup> Century. Moreover, the supposed freedom from payment related to various ancient Forest dues payable to the Crown and had nothing whatever to do with much later marking fees provided-for by statute and payable to the Verderers. Still, as I have already said, the judge considered that all this ancient paperwork was largely irrelevant, so the accuracy of the history was not examined.

The judge decided that she was bound by the earlier findings of the High Court and that the defendants were guilty. The ancient history did not concern her. The two principal defendants were each fined £200, each ordered to pay £2500 costs and each required to compensate the Verderers for unpaid marking fees to the extent of £680. I understand that there is still time for an appeal, but that is entirely a matter for the defendants.

As a one-time possessor of common rights in Minstead Manor, I have never been quite able to understand the logic of refusing to pay a £20 marking fee and thereby foregoing the receipt of £50 to £60 Verderers' Stewardship Scheme subsidy on each head of livestock in every year. Such would have been the benefit to anyone entering the Stewardship Scheme at the start. However, to the defendants there was evidently an important principle involved. Seeking to establish principles is sometimes an expensive business.

So far as the Verderers are concerned, I am sure they want nothing more than to get everything back to normal, with the byelaws observed and all Minstead Manor commoners welcomed (subject to the rules) into the Stewardship Scheme – just as most of them already are. Once again that is entirely in the hands of the defendants.

### **Sir Michael Heathcote**

The recent obituaries for Sir Michael Heathcote failed to record the time he served as Ministry of Agriculture appointed member of the Verderers' Court. He joined the Verderers in July 1979 in succession to my father, at a time when MAFF's firm but unwritten instruction to its nominees was that the less government heard about the New Forest, the better pleased everyone would be. Sir Michael did not possess a very deep knowledge of the Forest or its management, but he was a conscientious and good-natured Verderer and these are qualities which have sadly not always been demonstrated by official appointees to the Court. He had a good understanding of livestock and farming generally and particularly enjoyed the Verderers' site meetings. He served for a total of six years, being replaced by Alan Brockhurst in 1985.

One comment of Sir Michael's always sticks in my mind. It was at a time when things European were already beginning to dominate British agriculture. Sir Michael was a substantial landowner and one day the Verderers' discussions centred on something to do with land measurement. Eventually he exploded: "I hate hectares – they make your place seem so wretchedly small !" For those, like me, whose schooldays predated the universal teaching of the metric system, I should explain that there are 2.47 acres to the hectare. A chunky 500 acre farm thus shrinks to an insignificant figure of 200 when expressed in hectares.

### **Changes in the Enjoyment Department**

I am told that the Park's Director of the Enjoyment Department – "fun and frolics" department as I heard it described last week, perhaps unkindly – is leaving. I never had the pleasure of meeting this gentleman and for all I know, his departure may be a great loss at a personal level, but the department he heads represents a potential threat to the Forest as great as any other. If used simply to educate and inform visitors, it is at the worst harmless, but as an engine of development and expansion of recreation on the common lands, it could be disastrous. It seems that the functions of this branch of Forest management will now come under the auspices of the Director of Conservation. If that means that they will be subordinate, as the law requires in the event of (inevitable) conflicts between the protection of the Forest and the promotion of its "enjoyment" by the public, the change must be welcome. On the other hand it could equally well be used to dilute the work of conservation in its broadest sense. That would be a pity.

A recent publicity leaflet issued by the Park tells us how well it has been doing and how welcome its contribution to Forest management has been, especially through the issue of grants to many excellent causes. The handing-out of money is the easy part of making friends. Not until the Park demonstrates a will to put the Forest before developments which are damaging, but popular with the public, will it have a just claim to the laurels which it already seems inclined to award itself.

### **Losing the lost landscapes**

Last year the New Forest Association issued an interesting plan for restoring many of the Inclosures between Minstead and Burley to their 18<sup>th</sup> Century condition of Open Forest. They called the report "Restoring Lost Landscapes" and there was much of value within it. It was a process intended to be achieved over a period of fifty years or so and the plan generated a great deal of publicity and discussion. It was presented to the Design Plan Forum, a group which advises the Forestry Commission on the future of the Inclosures and I, at least, expected that it would be the subject of intensive discussions to see how far its provisions would be incorporated in the Forum's recommendations. It also figured prominently in the Association's annual report and in its 2007 general meeting.

Last week the Forum got round to considering the third and final block of Inclosures on which it had to give its views. That block included all the land which was subject to the NFA's plan. No mention of "Restoring Lost Landscapes" appeared on the agenda, but I

assumed that was an error. I was quite wrong. Not a single word was said on the subject. The Commission's proposals, envisaging the continued use of most of this land as productive timber plantation over the next century were agreed without significant amendment.

I once heard excellent advice from a seasoned campaigner on amenity matters, to the effect that societies should never start campaigns that they cannot see through to a conclusion. To do so wastes their own efforts and resources, the time of their potential opponents and not least the time of their friends. As damp squibs go, "Restoring Lost Landscapes" seems to have been a particularly sodden one.

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