

NEW FOREST NOTES MARCH 2001

The Dream of a larger New Forest

The first of this year's crop of glossy New Forest reports has arrived early (actually bearing the date December 2000) and is filled with fascinating facts, well-intentioned dreams and some rather questionable understanding of the law. It is called "A Review of the Loss of Commonable Grazing Land in the New Forest". It is a carefully researched record of areas over which New Forest stock once strayed and from which the animals were excluded by the installation of cattle grids about 1963. The report also considers losses and gains in grazing area within the Forest itself, but without coming to any very firm conclusions. That is in contrast to its extremely forceful recommendations relating to the "loss" of grazing outside the boundary of the Forest – otherwise called the perambulation. Here the report concludes that there is immense potential for restoring grazing, both from wildlife and farming points of view. For example, great scope is seen for opening up to grazing networks of minor roads and droves outside the perambulation. These networks might link portions of former common land and roadside waste and subject them to the invaluable mowing activities of Forest stock. Important habitats would be restored, the landscape would be improved and the animals themselves would benefit. The Commoners would enjoy a larger grazing resource than at present. Of course, as the report rightly points out, there are many parts where such expansion of the Forest would be impracticable because of traffic volumes and urbanisation, but potential targets are such areas as Exbury, Cadland and Calshot. In the north of the Forest, the report sees opportunities to open up parts of the Wiltshire road network linking former common land.

It would, in my view, be wonderful if such dreams could be converted into fact, but we live in a real world. The report has done a good historical job in recording past reductions in grazing area, but its recommendations are (with a few exceptions) quite impractical and have failed completely to acknowledge the law as it affects livestock, highways, damage to private property and the New Forest generally.

There are three or four insuperable obstacles to such schemes for expanding the New Forest, quite apart from the fact that many people living within the target areas are likely to be extremely hostile to such proposals. Firstly, as the report rightly acknowledges, the Verderers would have no control over the health and welfare of stock roaming the new areas. To counter this, the report suggests new legislation (hugely controversial in itself and extremely complex technically), but the Forest has already been told that there is no parliamentary time available for special legislation. That is why, we are told, we must accept the imposition of a standard national park and like it.

As an alternative to legislation, the report suggests a wholly unworkable manipulation of the New Forest Act of 1949, to apply the Verderers' powers *outside* the Forest. Apart from being an obvious attempt to evade the intentions of Parliament, it simply would not work. The geographical limit of the Verderers' jurisdiction is fixed by other Acts and no slight of hand can

overcome that. Moreover, another suggestion that the Verderers, a public authority, should contract to undertake work outside the Forest, which they are not authorized by statute to undertake, is clearly outside the law.

So much for the New Forest's special local Acts, but leaving them aside, these proposals fall at three further hurdles arising out of national law. To start with, livestock on the highway outside certain very closely defined areas like registered common land, is straying in the eyes of the law. It is not "lawfully depastured" as in the New Forest. The owner of such stock is liable to prosecution and to be fined. The animals may be impounded. One cannot simply magic up non-existent common rights to justify grazing a cow because it is nice for the cow or because it enhances biodiversity.

Next, such a straying animal, if struck by a car, usually renders its owner liable to pay compensation to the driver. That is the reverse of the rule which applies within the perambulation. It was not so before 1964 when animals strayed about the roads of southern Hampshire with impunity so far as the liability of their owners to motorists was concerned. In those palmy days the Commoners were protected by a judgment known to every farmer – *Searle v Wallbank* – and that was the only thing which made New Forest farming possible. That judgement has long since been swept away by legislation, but the Forest stock was safely confined within the perambulation before that happened. Claims would be ruinous for the commoners concerned and insurance would be impossible.

Finally, but by no means least, there was always (and remains) a liability on the owners of straying stock to pay for damage when those animals enter private gardens or farms. The property owner need not bother to shut his gate or erect a fence. Again the reverse applies within the Forest. In the days before the Forest was enclosed by fences and grids, there was continual bitter warfare between the commoners and property owners outside the Forest. I can remember when I started to work for my father in the early 1960s (he was then Hon. Secretary of the Commoners' Defence), having to maintain the vast collection of files dealing with such claims. I doubt if today's secretary has a single such claim on her books. If it was bad in those far off days when everyone accepted a moral obligation (but not a legal duty) to fence and shut gates, in today's urban society things would be quite impossible. Moving a cattle grid out from the Forest boundary cannot create rights, remove liabilities or change legal obligations.

The report is particularly concerned that grazing should be reinstated on various areas of what it calls "common land" outside but adjoining the perambulation. So far as I can see, no comprehensive search of the County Council's common land register was undertaken, but I would doubt if more than a tiny fraction of the alleged common is in fact registered. It may have been common land in the distant past, but that is quite another matter. I am sure it is highly desirable for conservation reasons that it should be grazed, but to try establishing a sort of greater New Forest grazing system from the lanes of southern Wiltshire to parts of the Solent coast is, quite frankly, out of the question. The sooner it is recognized as such the better.

I am sure that all sorts of grazing regimes are possible for these portions of former common land (now unrestricted private property – at least until the Countryside & Rights of Way Act is implemented). Agreements between the landowners and commoners may be very desirable and may need to be supported by public finance. That is perfectly proper, but the land is not now New Forest and never will be short of unimaginably complex and contested local legislation.

New light on Scots pines

January was one of those months when a small but important missing piece was added to the jigsaw puzzle of our local history. As so often in recent years, the discoverer was Chris Read from Romsey and his find relates to the history of Scots pine in the New Forest.

Scots pine grows very widely in the New Forest and the surrounding area, dominating the Inclosures and still, despite massive clearances in recent years, to be found on the Forest's heaths. It can be a dreadful nuisance in overrunning grazing areas and damaging rare habitats, but it is also a beautiful tree when open-grown and allowed to develop naturally. Today there are few old pines remaining on Forestry Commission land because of the elimination policy which has been pursued for the last twenty years or so.

Although the Scots pine looks thoroughly at home in the New Forest, it is in fact a relatively recent introduction. It may have been present here in prehistoric times, but almost certainly died out. The date and location of its reintroduction have long been the subject of interest and speculation.

The first modern plantings of the tree were said to have been at Ocknell and Bolderwood (about 1770), of which the surviving clump at Ocknell camp site was supposed to be a surviving remnant. However, the 1976 drought killed several trees in the clump and the Forestry Commission, anxious to preserve the lives of its customers, cut down the skeletons. A ring count showed that these trees were of much later date – 1818 or thereabouts. Further research in the 1970s then suggested that the first New Forest planting was at Fir Pound on Ogdens Purlieu, made by a Linwood man named George Bush. This had been about 1770. There matters rested until last year when a "lost" landscaping scheme based on Moyles Court was discovered and plotted. It included a lime avenue, ha ha ditches and a terminal skyline feature on Rockford Common comprising a little earthwork enclosure surrounding a group of trees known as Paddy Bussey's Firs. Exactly when this landscaping was carried out is unknown, but it certainly existed by the date of Isaac Taylor's map of 1759 on which an assumed conifer tree symbol is shown. The surviving group of ancient firs was presumed to be second generation or later successors of the original planting.

After Christmas 2000, Chris Read found that the National Trust had just felled a large dead Scots pine in another part of Rockford Common at a place just above Moyles Court known as Three Trees Hill. The tree (and a companion) was alive and well when I photographed it in 1967 and was probably killed, like those at Ocknell, by the drought of 1976. Chris counted its rings and, despite some damage by rot, there proved to be the astonishing

total of 202. Allowing for the rot, the age at death was probably about 210 years. If to this is added the 24 years since the tree is assumed to have been killed, the origin of this Scots pine is likely to have been about 1766. It may well have been a further element in the Moyles Court landscaping scheme and was certainly planted for effect, on an artificial mound which may be a barrow. Its great age raises the fascinating possibility that Paddy Bussey's Firs is not only one of the earliest Scots pine planting sites in the New Forest, but that the two surviving trees there (comparable to that on Three Trees Hill) could be original rather than later generations. It is even possible that they could be the very first pine trees to be planted in the Forest.

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