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Resolving the Forest's recreation disputes

For a great many years, a low level of hostilities has existed between the Verderers and the Forestry Commission over recreational use and development of the New Forest. In simple terms, the Commission has been trying to intensify and promote recreation and the Verderers have been trying to control it. Neither side would express its objectives in exactly these terms. The Forestry Commission declares that it is providing for legitimate public expectations, while still protecting the essential character of the Forest, and the Verderers maintain that they are protecting the Forest while allowing reasonable provision for recreation. Each sees the boundaries between protection and exploitation very differently and it is this which gives rise to the conflict.

From the Forestry Commission's point of view, the "problem" is that there are a great many things which it is not permitted to do without the permission of the Verderers' Court. For example, it cannot build a car park or a camp site if the Verderers refuse permission: there is no dispute about that. On this the law is entirely clear, however much the prospective developer may dislike it. At the other extreme, if the Forestry Commission wants to authorise a nature ramble by a dozen school children and their teacher, the Verderers would not dream of trying to interfere. That is a matter for the Commission alone. It is somewhere between these two extremes that the trouble starts. If Queen's House decides to bring in five hundred fun runners on a Saturday afternoon (highly disruptive to the quiet of the Forest, its wildlife and stock), does that need the approval of the Verderers ? The Court maintains that it does and the Commission is certain that it does not. The Acts are not entirely clear. There are all sorts of marginal uses and minor physical developments of this nature which have caused friction in the past. They have included ice cream sales, orienteering, moveable picnic furniture and so on. Many of them are small in isolation, but collectively they represent a constant and debilitating pressure on the Forest.

The most serious conflict on this ill-defined boundary was over draghunting, loathed by the Forest community because it was seen as undermining "real" hunting and condemned by the Verderers as a new and damaging recreational use in an already over-used Forest. In the end draghunting faded quietly away when the operator withdrew his application for a licence in the face of local hostility to trials and because of practical difficulties encountered during the course of those trials. That did not remove the underlying cause of dispute between the parties – what may the Verderers control and what can the Forestry Commission do despite the wishes of the Court ?

By the time the draghunting issue was resolved earlier this year, it was quite clear (at least to the Verderers) that there were only three possible ways of resolving the conflict with the Deputy Surveyor. Firstly, there could be a binding arbitration which would settle the demarcation lines between the Forestry Commission's development ambitions and the Court's rights of control. The Forestry Commission would not, for reasons best known to

itself, entertain this idea. Secondly, the two parties could go to law. That would have been an expensive and disruptive business for which the Verderers were, in any case, inadequately financed and constitutionally disinclined. The Forest already faces intolerable pressures from outside and it would hardly have helped to have the two governing bodies slugging it out in the courts. Moreover, with the potential for a third and even more powerful cook, in the shape of a national park, to start stirring the recreational pot, it seemed prudent for the Commission and the Verderers to hammer out an agreement on their respective rights and controls. This third option comprises a "Memorandum of Understanding" between the parties, published in draft at the September Verderers' Court, setting out who can do what and how far control can be exercised. The Verderers will receive public comments at the October Court and then, if the draft seems generally acceptable, conclude an agreement with the Forestry Commission. It can be inspected at the Verderers' office in Lyndhurst during normal business hours.

The important part of the agreement is divided into a series of lists of operations. Firstly, there is a list of licences which the Forestry Commission will give without reference to the Court being required. It includes items such as ranger led walks and non-commercial filming. Next there is a list of items which will be notified to the Verderers, but in which the Court undertakes not to interfere. It includes such widely differing subjects as foxhunting and archaeology. Then comes a list of works which cannot be carried out without the Verderers' permission – car park building, sports club structures and so on.

It is the last two lists which contain the real meat of the agreement, in that they include almost all the controversial events and developments. In list A, the Forestry Commission will submit its proposals to the Court and the Verderers will not "unreasonably" withhold permission. It includes cycle routes and ice cream sales. In list B the proposals will again be submitted and the Verderers advice will not be "unreasonably" disregarded. In this list there are such items as draghunting and notice boards.

It will be perfectly obvious that everything depends upon the word "unreasonable", so the agreement is unlikely to see the end of all dispute. On the other hand if, say, a cycle route is proposed by the Commission and opposed by the commoners, local residents, amenity bodies concerned to protect the quiet of the Forest and is in violation of recognised constraints such as the Quiet Areas, it is difficult to see how a refusal of the Verderers could be regarded as unreasonable. It is far from a perfect solution, but given goodwill on both sides, it could improve matters. It certainly needs something along these lines before the next big turning of the recreational ratchet if a park is established.

Access plans fiasco

Last month I drew attention to the new right to roam maps which were about to be published by the Countryside Agency, showing which parts of the big estates and farms in and around the Forest the public will shortly be allowed to ramble over as of right. At the beginning of September the maps duly appeared on the Agency's website – www.countryside.gov.uk where they remain. The best which can be said about them is that their accuracy is very poor indeed. From what I have seen of them, there is little doubt that a

bright school child with a good knowledge of the Forest could have done a lot better. For a start, vast areas of the Forest are omitted for no reason whatsoever. The "open to roaming" classification may end at an ill-defined track across the heath. On one side of it the public is given a right and on the other side it is not. That does not matter very much because, as everyone knows, the Forest is open anyway, Countryside Agency mapping notwithstanding. More important from the ramblers' point of view are the huge chunks of private heathland which are omitted. If the access groups know their job, they are no doubt already hot on the trail of these and are objecting to the draft.

The really serious problems arise where private enclosed fields with no possible qualification for access under the Crow Act have been shown as public recreation areas. When starting to look at the maps I naturally turned to my own village and the first thing which struck me was a little enclosed meadow belonging to one of my neighbours, about 2.7 acres in extent. It is rented by a local commoner for his riding horses and has been improved pasture for almost 200 years. I suppose its capital value in today's crazy market is not much less than £30,000. The Countryside Agency has, without the slightest justification, classified it as open to rambling. If my neighbour is not able to get this ludicrous classification expunged, it is difficult to see how his loss could be less than half the value of the land – say £15,000. What purchaser wants picnickers among his horses or walkers climbing over gates and looking into stables and stores or playing on machinery ? Even if the Agency eventually climbs down and admits a mistake, I shall be surprised if it sees fit to pay the inevitable two or three hundred pounds of solicitor's fees which will be incurred in fighting it. Altogether it is a sorry story and every field owner in the Forest must check the draft maps as a matter of urgency, or suffer the consequences. They will have the opportunity of meeting the mappers and the maps face to face at the Lyndhurst Park Hotel on 7th October from 12.30 pm to 7.30pm, in what the agency oddly describes as a "roadshow".

A curious land exchange

Sandwiched between (and almost wholly surrounded by) Busketts Lawn Inclosure and the Crown Freehold woodland of Ironshill is an area of Open Forest woodland extending to about 16 acres. It is actually something of a nonsense to call it "open" because, in 1969, the Forestry Commission shut off the 90ft gap which linked it to the remainder of Rushpole Wood in order, presumably, to save itself the cost of maintaining about 4000ft of perimeter fencing. For over thirty years it has, perhaps unlawfully, been denied to the commoners. It must be admitted that its grazing value is fairly low.

At the September Court, the Forestry Commission made a presentment asking to exchange this land for three parcels of enclosed Crown Freehold at Ashurst Lodge, just across the A35 road. The New Forest Acts allow for such exchanges, usually to facilitate various forms of private development, and in such cases they are not entertained by the Verderers unless there is a substantial net benefit to the Forest. The circumstances in this case are unusual because the character of, and public access privileges on, the land to be taken will remain entirely unaltered, even though its legal status changes. The Forestry

Commission has always allowed public access to its freehold woodlands in the Forest. The wood is classified as an SSSI and that also will not change. Only the common rights will be extinguished. The Ashurst Lodge land, on the other hand, will be subjected to common rights and opened up to the public for the first time. The balance of benefit is probably in the Forest's favour, but the Verderers will make a decision following public comment at the October Court.

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