

NEW FOREST NOTES SEPTEMBER 2023

The rights and wrongs of Forest common rights

In their July meeting the Verderers received a presentment from the New Forest Commoners' Defence Association (CDA) thanking the Court for its support in a campaign to challenge an alleged encroachment on common land near Ringwood and announcing the launching of a crowd-funding appeal to support this work. The dispute has the potential for incurring very heavy legal costs and the CDA is seeking not only financial support, but also the backing of other Forest organizations and authorities – notably the National Park and Natural England. The association told the Verderers that there is “extreme disappointment that neither the National Park Authority nor Natural England has contributed in any way to assisting us”. Such failure is particularly significant in what is becoming an otherwise community-wide effort.

The details of this particular dispute are not entirely straightforward and will in due course probably be considered by the courts, so they need not be examined here. However, the principles involved affect the whole Forest and so deserve some attention. I know that for those born and bred in the Forest, an understanding of such matters is almost instinctive. We live every day with the challenges and delights of being surrounded by common land (everything from having one's dustbin turned over for the third time by donkeys to the beautiful view across heather moorland on an autumn morning), but it is rather different for incomers who tend to find the whole system confusing. I last wrote in detail in these notes about the peculiarities and registration of common rights about twenty-five years ago. In that time there has probably been a considerable turn-over of the local population and there have certainly been some important changes in relevant law. It is now a subject worth revisiting.

There is a widespread belief that common land is simply open ground with no owner. It is usually covered in gorse, heather and small trees. The vegetation description may be correct, but the remainder of the definition is quite wrong. All common land has, despite its name, a legal owner and is just as much property as the townsman's house and garden. It is not now quite “private property”, as we shall see.

Most open land in the New Forest is state property, although local people still use the original name of “Crown Land”. It was once a royal hunting ground belonging to the sovereign and was protected by special laws. Early in the 20th century it was formally handed over to the state and is now administered on behalf of the nation by Forestry England. The old laws designed to protect the king's hunting were finally swept away in 1971, so that the common land which comprises part of the state's property is really now just a huge recreation park, a small part of which is devoted to the growing of commercial timber. The important thing which distinguishes it from an area like Southampton Common is that many local farmers possess (and some actually exercise) special rights over it. Most importantly, they may graze livestock, subject to various local regulations. These farmers are the famous commoners of the New Forest.

It is not the Crown Land which the CDA is particularly concerned with in its present efforts. On the Crown Lands, adjoining landowners occasionally try to steal small bits of ground from the government, but they are usually sat-on quite firmly by Forestry England's land management staff. The CDA's presentment relates rather to a smaller category of common land within the Forest. This land has many different owners. Some, like the National Trust, own hundreds of acres, while others may have only an acre or so of common, often adjoining their farms or houses. One hundred years ago almost all this common land was owned by the large landed estates around the Forest, but it has been steadily sold off in pieces for profit or to pay death duties. Huge areas were quarried to exploit the valuable deposits of hoggin gravel they contained, until the planners finally got control of the problem about forty years ago. Other bits were bought by philanthropists who were anxious to protect the beauty of the landscape. The one characteristic shared by all this common land is that other people apart from the owner have special rights over it. They are rights which were originally acquired



or granted centuries ago and most are entirely redundant today, but are still cherished by their possessors out of sentiment. Who today would want to dig marl for spreading on the land or peat turf for burning? Both rights required hard dirty work for small reward, but there is still economic value in grazing animals on the commons and collecting the official subsidies which such activities attract. There are also more precarious profits which may be made from dealing in livestock.

The photograph above shows the seven volumes of the 1949 Atlas which records common rights over the Crown Lands.

So exactly how does the system work? Assume that landowner Smith owns a piece of common. His neighbouring farmer, Jones, possesses rights to graze ponies and cattle on that

common. Smith may not do anything to exclude or impede those grazing animals, except with special government permission. He must not, in particular, fence the land in. We will see in a moment how Jones justifies his right to graze, but a third player now (since 2000) comes onto the stage in the shape of Rambler Brown. Brown may live in Manchester in a local authority flat in a tower block. He has no property to benefit from his rights, such as is possessed by Jones, but under the Countryside and Rights of Way Act he was given the right to wander about on Smith's land at will. Before that date Smith could lawfully have told him to leave, although such orders were difficult to enforce and were seldom made. Now, as in his dealings with commoner Jones, there is little that Smith may lawfully do to discourage Brown from enjoying himself on this little piece of common. Indeed, Brown is in a stronger position than his commoner ally, because he does not need to prove his entitlement for activities there. It has been granted to him by parliament. Jones must follow a harder path.



Ibsley Common, part of the Added Areas of the Forest, looking towards the Crown Lands

To prove the possession of common rights on the Crown Land is a simple process. Seven huge bound volumes of maps were prepared after 1949 showing all land to which is attached rights of common over the government property. This must not be confused with land subject to those rights, or in other words the common itself. The latter is recorded in the files of Forestry England and is seldom questioned. When it comes to the privately owned common land in the Forest, things are more complicated. Here there is another set of large volumes recording the rights possessed over some privately owned parts only of the Forest. This time only grazing rights, otherwise known as common of pasture for commonable animals, are recorded. Each volume has on its cover the names of the commons subject to the rights recorded therein. All the bits of private commons dealt with in this

process were part of what is called the Added Areas. These were large tracts of land included within the Forest boundaries when the surrounding ring of cattle grids was installed immediately after 1963. Common land within the Added Areas was previously unregulated, but was then brought under the partial control of the Verderers so far as animal management was concerned.

So far things are straightforward, if not exactly easy. What does not exist is any comprehensive physical record of the extent of privately owned common land. Its identification relies entirely on local usage, folk-memory, and placenames, all backed up by historical research where necessary. Most commoners operating on the north and west margins of the Forest are taught from childhood exactly where such common land is and about the importance of resisting any attempt by Smith or his fellow owners to encroach on the land. Usually there is little problem and most owners are responsible and appreciate the importance their land has for the local community. As an example, rights on Ibsley Common (National Trust) are recorded in a 1919 sale catalogue, by placenames on Ordnance Survey maps and in the writings of local authors. Less easy are the fragments of roadside verge sold off by the Somerley Estate as late as 2012. There local knowledge and expertise are crucial.

This brings us back to the CDA's presentment. The Association has long held the view that if one instance of interference with common rights is allowed to go unchallenged, a dangerous precedent would be established, but it is an expensive policy to follow, especially for a very small trade association and without the support which it might expect from wealthy and powerful authorities.

Anthony Pasmore