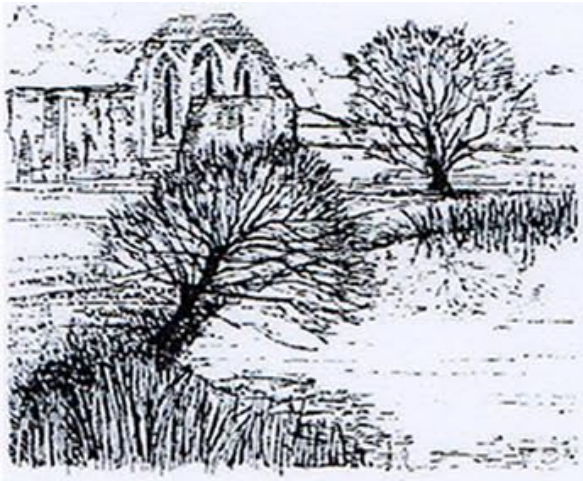

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Conservation or obstruction of public access

What can happen when conservation and implementation finds a conflict with Public Access?

Over the last few years there has been a step change in the way conservation has been absorbed into main stream funding. Initially this was seen purely as a farming issue with the Countryside Agency funding stewardship agreements and the like. The main aim was to increase the amount of intensively farmed land for the benefit of wildlife especially birds but also for specific other species, to protect soil and water supplies.

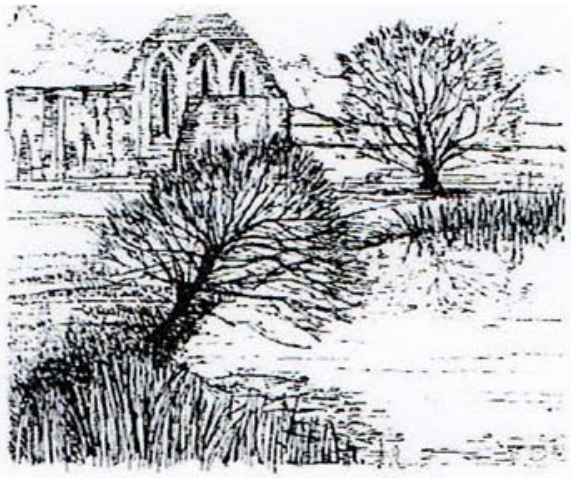
We therefore got a broad pallet of measures such as set aside, buffer strips and subsequently conservation strips and margins. The funding was basically agriculture orientated with some minor specifics in terms of public access such as cross compliance but seemingly without any method of enforcement by users.

A variety of changes have happened over the last ten years. EU directives and the change in the Common Agriculture Policy [CAP] switched the emphasis from food production to land management.

The effect of this wholesale change at EU level resulted in a radical change of the structure of the support agencies [Countryside Agency, English Nature and the Rural Development Service] as well as a change in emphasis in the way funding was applied. The new body became Natural England and there were also changes in emphasis to public access at the Forestry Commission and others such as the Ministry of Defence. The Governments approach to a whole raft of inter departmental issues which impinge on the countryside have resulted in a number of increasing areas of conflict.

They range at one end with the conflict between developers and government within the urban landscape for the provision of public open space to the other where our existing public open spaces are being enclosed and farmed or sold off to meet housing targets.

Within the urban landscape the main issues are that there is not enough useable open space leading to loss of connectivity with nature but also in the context of health and well being. The clash here is that particularly in the South/South East the green belt is under serious threat but it goes much deeper. The regulations regarding the provision and protection of new public open space are weak. Here money talks and planning authorities are caught by the ever increasingly need to raise money and meet government housing targets, whilst at the same time meet targets and duties for Habitat, Human Rights and Health.



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At the bottom of the heap, despite the proven benefits, comes public open space and public rights of way. We have benefited from Victorian ideals of health, wealth and happiness for over 150 years. The provision of much of our existing inner city public open space was as a result of their planning. We have lost much of the structure and regulation that produced this much needed public open space. Examples are many and range from the lack of public rights to open space and the loss of 10ha of public access (S193) Common land on the Olympic site to the development of playing fields and allotments and the use of existing public open space for developmental mitigation in the Thames Basin Heaths SPA rather than the original promise of new public open space.

Housing development in the South East is the driver for the loss of Green Belt and the scrabble by LA planners to make do and mend without any real public benefit in terms of open space provision. This is when conflict now emerges between conservation and public access.

Almost all new development is already in conflict with conservation ideals. There is some mitigation in terms of designing green corridors but for public open space by right there is almost none. None of the recent major planning proposals in the South East give any public access legal status for the new so called open space proposed

This was clearly illustrated in the recent proposals for Dunsfold Aerodrome where there were no public or private rights over the S106 open space. Likewise the specific design criteria for Bordon Eco town do not require any public open space by right.

More directly it is the converse where conservation is in effect reducing or causing the public to lose their rights, [de facto and de jura], or for them to be obstructed almost always physically but also by perception or through other difficulties.

There is tremendous pressure on the main agencies [NE & FC] as well as major landowners [MoD & NT] to meet conservation targets as a part of funding streams. The key driver is higher level stewardship fuelled by Common Agricultural Policy via modulation to about 14% of the total UK support.

This funding has driven the enclosure of swaths of previously open and unenclosed land across the South and West to meet a SSSI treasury Public Service Agreement. Treasury PSA agreements are also found to be the driving force in the scramble to development many of the MoD sites which were built for war purposes on common land. In the South but not exclusively on the intensively used urban lowland heath paddockisation has resulted in some difficult access

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situations where users have been almost physically as well as psychologically excluded through difficult access and management neglect of some areas.

What do the numbers show? There are no real robust statistics available. In the South we have those from the Examination in Public on the SE Plan Thames Basin Heath SPA in 2007/8 by NE/RSPB, the 2007/9 Farnham Park SANGS survey and the Hampshire CC surveys for the Countryside Access Plans and dogs.

The NE survey shows that over 56% of all user visits on the TBHSPA were dog walkers and the Farnham Park survey shows 70% (as well as a preference for not using it when it is wet). This is higher than the HCC/KC study. The NE figures would be higher still if the use of the public rights of way i.e. highway rights were removed as not being pertinent to the use of the SSSI/open space.

If these figures are extrapolated to include the Sport England Oct 2008 Active People Survey and the 23% of British Households [TNS for NE 2009] which own a dog this equates to over 15 million recreation visitors to the countryside with dogs. Similar statistics incorporating the British Equestrian Industries survey [2009] equate to 1.5 million equestrian visitors to the countryside with 30% being over 45years.

It seems that the Sport England figures under estimate the part dog walking and equestrian pursuits have to play in the recreational use of the countryside as well as the increasing number of cyclists who either access the countryside via the roads or off road on mountain bikes.

It may be seen that the TBH SPA is a special case but the approach to SSSI/SPA access management is likely to be rolled out across the country in the very near future.

One of the perceived special issues of the TBH SPA is the reason for ownership of the land 50% is M0D training the rest is held for public recreation (S193 LPA 1925/CA 1899). In this case CROW Sch9 S28G(2) applies and so public access is either the dominant tenement or is subject to public access policy. All of which has dog and equestrian access.

The NE survey indicates very little or no disturbance to list A birds from equestrians. On some soils equestrian use is a major benefit for certain reptiles and invertebrates.

Dog walking off the lead is deemed by NE & RSPB as the major access issue for heathlands with regards to ground nesting birds. The degree is not actually quantified but the feeling is that it has a major effect, whether this is greater than the weather or habitat restoration has not been

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addressed to any certifiable degree. This lack of decisive information causes concern as to the weighting given to funding and indirect taxation such as the TBH SPA developer's levy and the fencing of our open and unenclosed common land.

Conflict and advice springs up from many quarters. The number of recent cases of strict liability in respect to accidents on public rights of way due to animals especially cattle will cascade over onto lowland heath and other public open space with the introduction of conservation grazing especially in the cases where internal fencing is agreed by the Secretary of State and where commoners do not want to or cannot exercise their rights. This aspect [strict liability and insurance cover] of the rush to fence and graze these lowland heaths has been completely ignored by the agencies but the accidents have already happened and are in the legal process. The losers are the land managers and land owners not Natural England.

Common land in the south and that adjacent to urban development are also a conflict area between commercial dog walkers and other legal users. There have been an increasing number of incidents being reported. Here conflict arises between commercial activities such as dog walkers and event organisers with the legal user as of right of the commons and heathlands. These rights are not those permissive under CRoW 2000 but the exempt or higher rights (e.g. S15 CRoW) but also those of public rights of way through FC land or where public access policy from the MoD allows permissive use to the public at large. There is also the conflict caused by illegal users such as motorised vehicles and illegal encampments.

Commercial use of common land and manorial waste not associated with commoner's rights has been unlawful since the first commons legislation in 1866 and continue through the Commons Acts 1876 and 1899 through to today with the CROW 2000 and the Commons Act 2006.

What is the answer? A clearer and informed understanding by all agency and landowning authorities of what is the criteria and parameters for all aspects of public access land management. Public access management is not public access restriction and removal but subtle guidance to maximise environmental benefits without legislation. An understanding that the existing legislation does not enable existing public rights to be discounted or removed neither does it allow landowners to get out of their duty to do the best they can to enable the environmental requirements to be met but not at the expense of existing public access rights.

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