

Broxhead Commoners Association

Founded 6th June 1968



Chairman: MR. Richard Ellis,
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Hon. Sec: Mrs M. C. Comber
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FAO HCC CEO: Mr Andrew I. Smith

14th February 2012

Broxhead Common CL147

Dear Mr Andrew Smith,

I am writing to you through your Monitoring Officer as I cannot find a contact for you personally on the HCC web site?

I am concerned at the apparent, either ignorance or misunderstanding of the law shown by your Officers.

I will attach this letter to my previous emails so that you can see what my complaint is about. I have also copied in the reply from your Head of Countryside, Andrew T. Smith.

My concerns are:

1. With respect to the professional view of the site manager, the request from the Broxhead Commoners Association is being ignored. I am pointing out that the notice just inside the layby at the end of BW46 adjacent to the B3004, may cause a problem to horse riders and should be removed. It does not seem to be realised that the Commoners legal interests are paramount and certainly his management should be in line with their direct wishes, not the other way around?
2. The signs are large, expensive and unnecessary. Why when resources are so scarce are they

being manufactured and erected? Why no primary consultation with the Broxhead Commoners?

3. The requirement that horse riders should keep to the bridleways shown on the signs, is incorrect and therefore misleading. We maintain that there is a customary right of access to the whole of Broxhead Common as documented by our Founder and Chairman, the late Mr John Ellis. It is also in keeping with the opinion of Planning Inspector, Mark Yates in his decision to claims for bridleways on Broxhead Common 2007. NATROW/Q1770/529A/05/64
4. Mr Smith notes the report of the Planning Inspector. Is it HCC policy just to note and not to act on the decision of the Planning Inspectorate? Would it not have been better for the decision to be appealed if HCC did not agree with it? Surely that would be no more than normal practice?
5. I am referred to sec 38(2) CA 2006 and told that the signs do not come under this section. However it seems to me that they do, as they are: *"works which have the effect of preventing or impeding access to or over any land to which this section applies"* as far as horse riders are concerned?
6. In any case why put a proposition to your Regulatory Committee to pursue more permissive access for horse riders through the Executive Member, if there was never an intention to do so?
7. Why has HCC turned a blind eye to the unauthorised fencing of 80 acres of common land on Broxhead Common?
8. I am told that I can apply to the County Court with regard to the illegal erection of fences but surely the expectation must be that the Council should pursue the matter on behalf of the public interest?
9. Why is determined reliance placed on the lease from Mr Whitfield, which seems to me to be invalid in any case?
10. I am told that claims which I have been encouraged to submit are waiting in a heap with some 34 in front of them. The statutory time limit for the LA to consider a claim is twelve months. Why does HCC constantly break the law in this respect? A Statutory Duty is just that and Parliament expects that it will be performed to the minutest detail. If Parliament had meant it to be no more than a power then it is up to Parliament to so prescribe, and not Hampshire County Council?
11. Mr Smith goes on to say: *"Further it was noted that due to the designation of the site as an SSSI and Special Protection Area, consent from Natural England (then English Nature) would be required, and that consent was highly unlikely to be forthcoming. It was therefore considered inappropriate at that time to pursue the creation of any new routes."* Again he is mistaken for the legal interests of the Commoners as occupiers of the land take precedence. It seems to me that Natural England and HCC are taking powers to which they are not entitled since they have no interest in the soil? In any case how does this fit with the Government policy of localism?
12. Why should consent be sought from Natural England? Broxhead Common may be an SSSI but Natural England have a duty under s.37 of the Countryside Act 1968 **"to have due regard to the needs of agriculture and forestry and to the economic and social interests of rural areas"** amongst which I would include the interests of the public to access the common. Surely it is up to Natural England to consult us rather than your Officer to predetermine the issue?
13. Neither has he explained why Broxhead Common has been allowed to deteriorate to the extent that the path shown on the OS Map of 1971, has long since been obliterated along with many others by excessive overgrowth of gorse and brambles etc? When the rather strange arrangements were made between HCC and Mr Whitfield in 1978, it is on record that the Hants & Isle of Wight Wildlife Trust would be

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responsible for its management. Why has the site manager not seen fit to protect the public access?

I am sorry to have to bother you but it seems a shame to see a 1000 years of our laws and customs diminished apparently for the sake of burearcrtatic convenience.

I look forward to receiving your reply.

Kind Regards

Maureen Comber