Mrs Maureen Comber, The Old Cottage, Frith End, BORDON, Hants GU35 0QS

The Rt. Hon. Damian Hinds, MP
House of Commons,
LONDON,
SW1A 0AA

13th November 2013

Dear Damian,

Common Lands of England

Thank you for forwarding Annex 1 containing the answers to my questions in my letter to Richard Benyon dated 17th July 2013.

As usual the answers raise yet more questions which are as follows:

1. As previously stated, the law is that "*Measures under the EC Rural Development Policy are only available for applicants engaged in 'farming' and are therefore inapplicable if a common is not put to an agricultural use."* The response from Natural England quotes EU Regulations 20th September 2005, but it is my understanding that "*Environmental Stewardship seeks to adopt a whole farm and more 'holistic' approach to farmland biodiversity…… The beneficiary is required to carry out specified activities to further environmental protection on land in which he has an interest, and detailed prescriptions are set out in regulations governing the operation of the scheme…….Eligibility is determined by the applicant achieving the relevant points score for management undertakings under each of the four elements of the scheme.* ***Applicants must prepare a Farm Environment Record, and Natural England will set a points target for each farm dependant on its size……HLS is, more closely focused than ELS and targets environmental improvement in the most valuable farmland habitats and features."*** Therefore please may I ask to be sent, the point score for Broxhead Common undertakings, what those were, how long it has been running, and exactly who the beneficiaries are?

In fact the2005 regulations were an extension to the mid-term review from 2003 and were mainly connected with 'cross compliance and environmental management'. This function was carried out by the RPA. I am not at all clear how land managers not registered under the CAP for Rural Farm Payments can qualify to receive HLS funding which is for the benefit of farms and farmers? I should be grateful for a further and clearer explanation please?

As you say these are EU Regulations, but they appear to me to conflict with the laws of this land which give strong protection against the fencing of common land. S194 Law of Property Act 1925 "…**The principle requirements for the section to operate are [a] that the works are such that access**

is prevented or impeded, and [b] that the land was subject to rights of common on 1st January 1926…

> ***"The access for the public to take air and exercise, provided by section 193 then is one form which must not be prevented or impeded."***
> ***Protection of the right lies primarily in the enforcement provision contained in section 194 LPA 1925. Under that section, in relation to land which was subject to rights of common on 1st January LPA 1926, the erection of any building or fence, or the construction of any other work which prevents or impedes access is unlawful without the consent of a Minister****. Where any such works are carried out without consent, the county court shall, on the application of a county or district council, the lord of the manor or, any other person interested in the common, have power to make an order for the removal of the works and the restoration of the land to the condition in which it was before the works were carried out.* ***It should be noticed that the principle criterion for the section to have effect is that the land was subject to rights of common when the LPA 1925 came into effect, i.e 1st January 1926.*** *It follows that any land which was not subject to rights of common on that date is unaffected by section 194. Within this class is at least the category of manorial waste and possibly, depending upon the construction which is placed upon the term "common", all stinted and regulated pastures and some common fields." (Gadsden)*
>
> Sec.194 has now been replaced by Sec 38 C.A. 2006:
> This section applies to—
>
> (a)any land registered as common land;
>
> (b)land not so registered which is—
>
> (i)regulated by an Act made under the Commons Act 1876 (c. 56) confirming a provisional order of the Inclosure Commissioners; or
>
> (ii)subject to a scheme under the Metropolitan Commons Act 1866 (c. 122) or the Commons Act 1899 (c. 30);

As you will see permission can only be given by the Minister.
Is it right to try to circumnavigate the law by use of the Planning Inspectorate who issue a supplementary to the effect that permission is given, subject to it not contravening any law, scheme etc. when it obviously does?

2. You say 'Under power to make grants' that it is key that the person to whom an agri-environment grant is made has to have an interest in the land as defined in the Regulations, but then go on to say that in the case of 'common land' this must be a person with a right to graze or represent a person with such a right.

It seems to me that the point may have been missed that there are property rights involved, because the grants are for purchasing to some extent the property rights of those with an interest, who must then sign up to abiding by the terms of the contract. It should therefore not be possible for Wildlife Trusts to apply, as they have no legal interest in the soil and therefore no property rights to exchange? It seems to me that Natural England is misinterpreting the law, possibly misled by the complexity and quantity of all the EU regulations themselves?

Theme 2 – Consultation on Common Land

I note that you do not currently hold records of who the agreement holders have contacted. This is not surprising because of the fact that the Rights Registers for common land, have generally not been updated as the CRA 1965 required. It is therefore almost an impossibility to consult with all rights holders. This in itself should disqualify the applications from the start? So now we have agreement holders in the form of Wildlife Trusts, who in law have no legal interest in the soil of a common, signing up to a contract on the basis that they have consulted with all common rights holders, when in fact in my experience, they have not, and indeed it is probably impossible for them to do so? In addition the likelihood of all common rights holders agreeing would be unlikely, simply because they may not compromise the rights of the others. If they did then it may be that they would be seen to forfeit such rights as they may have. Please may I know, that of the number of contracts signed, how many have been signed in total and how many on behalf of Commons Councils?

The BHS are quite correct to expect the information they have asked for, since in my experience not only is this information not forthcoming, but where public money is used for grant funding there should be an expectation that the detail is available and is correct. Please may I ask why it will take so long to get a response from the Land Management Scheme Group, as many commons will have by March 2014, undergone applications to the Planning Inspectorate, who presumably will err in law and permit, with the result that more of the funding will have to be returned eventually?

I note that you say that Hampshire County Council, The Isle of Wight Wildlife Trust and the Amphibian and Reptile Conservation Group, have been seeking views on how best to look after the site to benefit the people who use it and the wildlife that lives there. Yes they have, but not from the Commoners themselves or their representatives, apart from the public consultation. They have also misinformed the public on various aspects, as I have made known to Footprint Ecology's Jim White. He used to work for Hampshire County Council, so can hardly be thought of as being as independent as might have been hoped for! Incidentally, providing cattle grids on the adjoining road to Shortheath Common as part of the deal, can hardly be of benefit to the neighbourhood in this context, as it is primarily a highway matter of speed control rather than anything to do with management of the common, although it would probably be necessary if the proposal for the common was <u>not</u> to fence it. Neither is it of benefit to the people who use it, as fencing and gates will obstruct them as well. This is particularly the case for horse riders. Anyway these lowland commons are not grazing commons but were more particularly used historically, in the socio economic peasant economy for estovers, pannage, turbary etc., rather than put to an agricultural use.

It is quite obvious that the purpose of these consultations is not as wide as is made to appear, because since when have the public been consulted as to whether cutting or burning was preferred? There would simply be no need to do this as it has previously been considered as a simple management issue. It is clear it is about fencing our common land rather than anything else and using grazing as an excuse to do so. It seems to me that this is being accomplished by underhand means and circumnavigating the laws of this land in order to take control of our open spaces. It also appears that collective management of common lands is quite at odds with the governments 'localism' policy and is therefore a regrettable leftover from the last Labour Government policies?

<u>Natural Englands Response to Q5</u> – I would say that:

"Higher Level Stewardship is more closely focused than ELS and targets environmental improvement in the most valuable farmland habitats and features. These include management options with annual payments for the preservation of environmentally valuable hedgerows; for the creation and management of woodland; the creation and maintenance of unfertilized conservation headlands in arable fields; and for the creation, restoration and maintenance of species rich semi-natural grassland." (Rodgers). Please state which of these NE have signed up for Broxhead Common?

Has it occurred to Natural England that although it welcomes the simplicity of the agreement for Broxhead Common, the public whose money is being distributed by them, would like to know how and on what it is being spent? For example you were kind enough to show that the figure spent so far on the agreement for Broxhead Common is £25,459,89. That is a very large amount of money and so far as I can see, the only thing to have been done is to put up unwanted and intrusive signs. One of these is actually on BW 46, which is an obstruction to the highway under sec.130 HA 1980. It is also on common land, yet despite my protestations it is not removed. No locals were asked if they wanted these signs which are huge, and in my view ruin the feeling of open space and wildness. There must be some half a dozen to cover only 100 acres of Broxhead Common. In addition they misinform horse riders by instructing them to keep to the bridleways when in fact they have a right to take 'air and exercise' over the whole common since it comes under s.193 LPA 1925.

Is the value of the agreement ring fenced for the environmental contract or is it just handed out year on year without account?

Broxhead Common has been managed by the Hants and Isle of Wight Wildlife Trust and Hampshire County Council for the last thirty five years, during which time they have chosen to let it overgrow to the extent that it prohibits customary access by the public and has been in a deteriorating condition for at least the last two decades. This is deliberate so that the 'wildlife' remained undisturbed, but in retrospect has proved to be of no benefit, since the changing flora from heathland to gorse, bramble and fern have not been beneficial to the sand lizards or the public or other indigenous species.

For your interest I am attaching a letter from Mr Peter Whitfield, the so called owner of Broxhead Common. I say so called because Broxhead appears in the Headley Tithe and Apportionment Act 1847 as having no Proprietor and used by Sundry people. It was not until 1962 that it appeared on a conveyance to Mr Whitfield's predecessor, a Mr Myers. It is difficult to understand how it managed to be included, but in any event and at the most, it will only be vested rather than owned.

You will notice how he values the nature conservation and states that the common is in a deteriorating condition. Please note this letter is dated 2005 so please may I know when Broxhead Common was last assessed because I would say there had been no improvement since then? However Mr Whitfield is the same man who fought the commoners' application to register the common land for eight of the sixteen years. They won, but despite that he retained unauthorised fencing to 80 acres of our common land without application to the Secretary of State, and in the face of objections from the Parish Councils and public at the time. It took sixteen years for the Commoners' to get confirmation of the registration for the whole of Broxhead Common in the face of his objections, which they had to fund out of their own pockets; from the twelve day hearing before the Chief Commons Commissioner, to the High Court and finally the Court of Appeal in 1978. There the case was withdrawn, so under s7 CRA 1965 the land immediately became registered

common land as per the decision of the Chief Commons Commissioner in 1974, sec.10 CRA 1965 made this final. Notwithstanding no application was made for the retention of the fencing which to this day remains unlawful despite continued protest from the commoners. For all of this time, the public have been prevented from enjoying their rights to 'air and exercise' over the whole common and of course the commoners' have been disenfranchised from their Rights to the 80 acres also.

So maybe you can see why talk of 'work strategically aligned, delivering the optimum benefits and avoiding inefficiencies and wasting resources', will cut little ice with either me or this neighbourhood in the face of what can only be described as the theft of public open space, colluded and condoned it would seem by local government, who are the very people we trust to protect such public assets.

Not content with this we are now witnessing the wholesale theft by enclosure, of our last remaining wild places throughout England and Wales.

Natural England will have much to answer for. But so will this government if it can be seen that they dig deep on an issue of name calling such as plebgate, but try to ignore this much greater crime where public benefit has and is being denied, at the same time as they are being told to live healthy, active lifestyles. Is that the right thing to do?

You have agreed with me that this matter needs resolution in the High Court, I would therefore ask that in the public interest, Natural England are required to take it there so that all the issues and complications can be fully and finally resolved.

Yours sincerely

Maureen Comber
Hon Sec BCA