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Dear Francis Davies,

Broxhead Common et al

Thank you for your reply to mine of 28th August 2013, addressed to Natural England's CEO, Dave Webster and the Executive Directors. The information and advice was helpful but also raises yet more questions.

I note that your reply has been copied to HCC and Lord Neuberger but think you meant to say Highways Authority rather than Agency?

I will keep my reply in the order of my letter and incorporate the information contained in your themes to see how it can help towards solutions to these problems. I note the wide responsibilities Natural England has both in an advisory and regulatory role.

The Signs

"**Q3** *This question is better directed to Hampshire County Council to answer……"*
As you will appreciate, having seen the emails I have already sent to you, I have over a long period complained to Hampshire County Council (HCC) with regard to the signage. I attach a letter in reply to the Leader of HCC dated 2nd May 1990 . When my claim for bridleway around the edge of the illegally enclosed 80 acres of Broxhead Common was turned down at Regulatory Committee on the advice of the Officer, it came with a promise to seek more permissive bridleways on Broxhead Common. Even while the appeal which followed, was in progress, signs were put on every available trail, even the claimed way, to prevent use by horse riders. Even though the Inspector said he thought we had a right to ride on the common anyway, yet another one has been recently placed actually on and therefore obstructing, BW46 (Headley). I have referred you to the reference that the bridleway, which is on common land should be 5 mtrs wide instead of the narrow width shown in the photos. **Even though I wrote to you at the end of August, this sign is still obstructing the bridleway.** The vegetation is on the surface of the path rather than encroaching from the sides so would not, I think, be a problem for the landowner? It cannot be right for the public to have to take out a sec. 56 notice when Natural England are in a position to advise HCC, that in obstructing part of BW46, they are contravening the law relating to obstruction under the 1980 HA? I would be grateful therefore if you would so advise them?

I note that HCC did consult NE, but not it seems, with regard to the signage as indicated in the email from Mr Smith dated 03.08.2011 "*We sought and gained permission from Natural England before installing all six new entrance signage at Broxhead Common".*
The question needs to be asked why HCC deliberately misled me into thinking that the permission gained was for the signs when in fact according to your response it was in connection with damage limitation to the SSSI. Has NE remembered correctly and is there written evidence to support this statement? We need to get to the bottom of this confusion please.

This brings me to the information written on the signs, namely 'Local Nature Reserve' and 'horse riders should keep to the bridleways'.
"**Theme 7,** Local Nature Reserve at Broxhead Common" **Q14.**
I am referred to the declaration by HCC under the National Parks and Access to the Countryside Act 1949.
I also note at **Q15 "***At Natural England, we work to conserve and enhance England's natural environment and its rich biodiversity. We believe contact with nature is vital for wellbeing and quality of life, and that everyone should be able to benefit.*
As accessible green spaces close to where people live LNR's can help achieve that".

I am not quite clear on how your interpretation of 'Local Nature Reserves' sits happily with the NPACA 1949? Quoting from 'The Law of Nature Conservation' by Chris Rodgers, he says:
"Nature reserves are protected areas in which nature conservation is the primary consideration. They therefore provide a contrast to the more extensive network of SSSI's in which management for nature conservation is sought alongside other land uses, including for example, forestry or agriculture. A nature reserve is therefore defined as (1) Land managed solely for a conservation purpose, or (ii) land managed not only for a conservation purpose but also a recreational purpose, if the management of the land for recreational purposes does not compromise its management for the conservation purpose intended. They are intended to be areas where the primary focus is the conservation of nature, the study of their flora and fauna, and recreational activities that are compatible with these objectives. To this end the management of land for a 'conservation purpose' is defined to mean: (a) providing, under suitable conditions and control, special opportunities for the study of, and research into, matters relating to the fauna and flora of Great Britain and the physical conditions in which they live, and for the study of geological and physiographical features of special interest in the area, or (b) preserving, flora, fauna, or geological or physiographical features of special interest in the area.

Nature Reserves are designated by the Conservation Body……The Conservation Body must make a declaration as to the nature reserve status of the land concerned and advertise this in a manner best suited to bring it to the attention of all with a relevant interest……The management of land within nature reserves is achieved primarily through the use of management agreements, by the passing of byelaws, and in some cases by the use of compulsory acquisition to bring the site into the ownership of the Conservation Body…….. Where land is declared an LNR, it must be managed primarily for conservation, with recreation permitted only as a managed subordinate use – provided it does not conflict or impede conservation management. ***It followed that where a LNR was declared by a local authority in circumstances where the public enjoyed statutory recreational rights over the land under a public trust, the two land uses were potentially incompatible and the LNR declaration was invalid……."***

It maybe that NE have overlooked that the NPACA 1949 was altered by NERCA and I would now say that it appears that **Q14 and Q15** does not square up with the law as it now is? Certainly I can say that I was not consulted and neither were my friends and neighbours before the decision to make an LNR was made, which is confirmed by lack of any fore knowledge of the impending signage. **Q11.** Please may I have an explanation why no consultation took place, at least with the commoners if not the neighbourhood, as it appears from the above that the Conservation Body, ie NE has the duty to bring to the attention of all with a relevant interest?

I am referred in Theme 5 to 'A Common Purpose' but was disturbed to see a reference to cycling on commons rather than, the law forbids cycling on commons. This degree of inaccuracy does not fill one with confidence in an advisory leaflet and maybe HCC have been wrongly advised by it?

Q15 "*Natural England does not consider horse riding per se to be incompatible with nature conservation", i*s of course something I am delighted to hear as a horse rider. It was also confirmed by a previous English Nature CEO in the attached letter, written as you will see in August 2005. However this message does not seem to translate itself to local NE Officers as can be seen from a letter received just six months previously. (attached).
Also attached are letters dated May, 1990, from the Leader of East Hampshire District Council in which he said: "*The NCC are very concerned that any increased access to the common would result in further erosion to this valuable heathland site and have proposed that any change should include an increased ranger presence. Obviously this raises other issues including manning levels etc. in County's Recreation Department.*
Broxhead Common and its bridleways have been something of a problem to the District Council for many years resulting, originally from a decision by the landowner to fence part of it. The County Council have always been the lead Authority in this matter and will remain so…" .
March and January of the same year produced further evidence from none other than HCC's Assistant County Secretary, to show that local officers working for the Nature Conservancy Council, English Nature, now Natural England are not neutral towards horse riders when it comes to promoting access.
This situation seems not to have improved and as recently as 2007 HCC objected to their own Order for a bridleway from BW54 to Cradle Lane. The objection was clearly not in the public interest, so was it instigated once again by the local office of Natural England?

Are Natural England aware of the difference in attitude between their local officers and NE HQ? Or was HCC trying to divert attention from the malfeasance of their commons registration department? Or is it collusion between the two? Answers to these questions are imperative to get to the bottom of these problems once and for all because what is happening on site is not reflecting the duties and responsibilities in the balanced way you refer me to in Theme 3.

<u>This brings me to problem number two. Theme 2 & 8. The unauthorised fencing of 80 acres of common land at Broxhead and its removal from the Register by the registration authority</u>

Q7 "*Natural England does not have any powers in relation to fencing common land".*

But you do have "*duties and responsibilies as a result of common legislation eg CA 2006"?*
NE also has the power to influence.
NE must therefore have a concern with the removal of 80 acres of Broxhead Common by Hampshire County Council without application to the Secretary of State?
I have sent you details of this malfeasance and am surprised that you can only say that you have no powers with regards to the illegal fencing. I have to ask therefore whether NE are colluding with the HCC to cover up their crime, or the land registry who have thought it fit to give land registration to a landowner on no more evidence than the Consent Order for the withdrawal of a case that was never heard, but promoted by HCC as an order of the Court?
It is quite possible of course that NE have or are being ill advised by HCC. Please may I ask you to account for these strange circumstances which must be contained in NE's duties and responsibilities?

Under Theme 4, **Q13** you ask me to send you and HCC, evidence that Broxhead is a sec 15 common. I could do that, but I can equally tell you why it is and direct you to the evidence. I will not contact HCC because as you have seen they have threatened me with unreasonable complainant behaviour if I do, but I have no problem with you passing the information to them. You say you are able to "*update our records accordingly"* but I have to ask if NE has the authority to change the data/register? You say at Theme 8, **Q16** that it is the High Court that may order a commons registration authority to amend the register and that NE has no powers in relation to adding or removing land from the Commons Registers! May I hope that NE will send this matter to the High Court for a decision?
In the meantime I can direct you to the final decisions of the Chief Commons Commissioner for Broxhead Common CL147, for the land and rights section of the register, which can be found here: http://www.acraew.org.uk/uploads/Hampshire/BROXHEAD%20COMMON%20-%20WHITEHILL%20AND%20HEADLEY%20NO.CL.147(1).pdf
and here:
http://www.acraew.org.uk/uploads/Hampshire/BROXHEAD%20COMMON%20-%20WHITEHILL%20AND%20HEADLEY%20NO.CL.147.pdf
Please may I know whether your data is in accordance with these decisions? By which I mean does it show the registration of approximately 400 acres?

Theme 6 Q12 & 13 "*Natural England's database of information about commons indicates that Broxhead Common is not covered under Sec 15 of the Countryside and Rights of Way Act 2006"* but I think this must be a typo and you actually mean CROW 2000? Anyway for the sake of clarity:
Sec. 15 Rights of access under other enactments.

(1)For the purposes of section 1(1), land is to be treated as being accessible to the public apart from this Act at any time if, but only if, at that time—

(a)section 193 of the **M1**Law of Property Act 1925 (rights of the public over commons and waste lands) applies to it,

(b)by virtue of a local or private Act or a scheme made under Part I of the **M2**Commons Act 1899 (as read with subsection (2)), members of the public have a right of access to it at all times for the purposes of open-air recreation (however described),

(c)an access agreement or access order under Part V of the National Parks and Access to the **M3**Countryside Act 1949 is in force with respect to it, or

(d)the public have access to it under subsection (1) of section 19 of the **M4**Ancient Monuments and Archaeological Areas Act 1979 (public access to monuments under public control) or would have access to it under that subsection but for any provision of subsections (2) to (9) of that section.

(2)Where a local or private Act or a scheme made under Part I of the **M5**Commons Act 1899 confers on the inhabitants of a particular district or neighbourhood (however described) a right of access to any land for the purposes of open-air recreation (however described), the right of access exercisable by those inhabitants in relation to that land is by virtue of this subsection exercisable by members of the public generally.

As the Order made under the NPACA 1949 by HCC with regard to Broxhead, includes access by the public it can be assumed the following is the case since HCC pay rent on a 20 year basis to Mr Whitfield. *"Under provisions contained in sec. 64 of the Act an owner of any class of common land may enter into an access agreement with a local planning authority providing that the land is "open country". The purpose of such an agreement is to enable the public to have access for open air recreation. "Open country means any area appearing to the authority to consist wholly or predominately of mountain, moor, heath , down, cliff or foreshore (including any bank, barrier, dune, beach, flat or other land adjacent to the foreshore.) Unlike statutory access provided by section 193 LPA 1925, an access agreement made under the National Parks and Access to the Countryside Act 1949 may provide for the making of payments by the local authority by way of consideration for the agreement or as a contribution towards consequential expenditure."*

Please may I know why rent is paid to Mr Whitfield when Broxhead Common comes under Sec 193 of the LPA 1925? I don't know what information is available to you and I am quite surprised that you ask me to provide the information, however it qualifies for all or any one of several reasons namely:

1. In 1955 HCC commissioned the Senior Lecturer of Geography at Southampton University to identify all the common lands in Hampshire. He subsequently wrote his findings in a book published by HCC called 'The Common Lands of Hampshire'. Here he describes how the survey was carried out between May and December 1956. He says the survey was to include the "whole of the administrative area of Southampton, with the exception of the area within the perambulation of the New Forest. The Clerk of the County Council placed at my disposal all the Files that made reference to Commons in Hampshire". Southampton and its administrative area was undoubtedly borough and urban.
2. However Broxhead also qualifies because it is awarded as common land under the 1847 Headley Tithe Apportionment Act, with no proprietor and used by sundry people. This brings it under sec. 193 LPA *"…or a common, which is wholly or partly*

*situated within [F185an area which immediately before 1st April 1974 was] a borough or urban district**, and to any land which at the commencement of this Act is subject to rights of common and to which this section may from time to time be applied in manner hereinafter provided"** *(sec. 193 LPA 1925)*

3. Section 194 LPA 1925 is also important in that it clearly states and underlines that any common with rights of common before 1st January 1926 is brought under sec 193 and sec194 of the Act, thus removing any doubt the preamble under sec 193 might create.

4. **Taverner,** also throws more light on the ownership of Broxhead Common, all 385 acres of it.
   "*This common was requisitioned by the War Department which is now owner and Lord of the Manor. There are a few grazing rights and rights of digging turf and cutting of bracken, but there is virtually no exercise of these rights".*
   This again begs the question as to how 180 acres of it found its way on to a conveyance from the owner of Headley Wood Farm to Sefton Seigfied Myers in 1962. It was he who illegally erected the fencing around 80 acres of it. He then sold it to Mr Peter Whitfield in 1970. Mr Whitfield would have been well aware of the complaints by the commoners with regard to the fencing and how they fought with limited means to save the common for the benefit of the neighbourhood. I have queried this with the Land Registry who say they will not investigate unless I can show other deeds of ownership, which is clearly impossible in this case as there will be none!

   I hope you will be able to confirm to me that the register should now be altered to reflect the true state of affairs with regards to the registration of approximately 400 acres of common land CL147 to include the extracted 80 acres?

My third problem **The inclosure of our common land,** is contained in your Theme 4 **Q10.**

Having noted the response I can only reiterate what Professor Rodgers has written in his book 'The Law of Nature Conservation', which seems to be endorsed by your reply, that HLS agri-environment schemes are only open to farmers and grant funding is made by the Secretary of State. My question therefore is, why are NE officers not advised that they have to take into account existing public rights. There appears to be a blatant disregard to existing public rights of access and the effect that extensive fencing and grazing have on those using the land and in displacement. We were led to believe over a year ago that NE and others in the grant system would deal with this issue but to date we have not seen any action despite many protestations.
How can you sign contract agreements when your officers have little or no legal training in public access and your own internal guidance does not even mention that separate consent may be required? It seems to me that local authority landowners and managers are only interested in one thing and that is raising money. Not doing their statutory duty either towards the reason for holding the land – public recreation, but also conservation for which NE cannot pay. This was and is shown as a good example in the case of Hartlebury where the reason given for granting the permanent fencing was to get HLS which in itself was a misrepresentation of the truth both by WCC and NE, but was an out and out lie that WCC was the land owner since they are only vested under s9 (1965), to protect the land on behalf

of the landowner from encroachment. They have no powers except general powers to spend money under the LGA1992, and then that expenditure would be prefaced by the need to maintain the land for the dominant tenement which is public access and recreation. Chorleywood is another where there are serious legal anomalies with the Parish Council supposedly owning and to whom payments are being made. S193 and CA 1899 apply to the land, yet the scheme of regulation is with or should be with the Three Rivers UDC. Permanent fencing is an integral part of the agreement yet no attempt has been made to use exempt regulations. Such actions are a major unlawful drain on public finances and removes large amounts of CAP money from the true recipients of stewardship – farmers. This funding is not for statutory duty or as a way of financing local authority and government landowners, whose main use is other purposes.
As for the funding, I have to ask why this is paid before any challenge can be made to the supplementary added at Public Inquiry by the Planning Inspectorate. This always states that permission to fence is subject to any other Act or Scheme or bylaw which may not support the application? Clearly the law will not and does not support the fencing of common land. It has long been held that common land is secure because the landowner cannot fence it because of the rights of the commoners and the commoners cannot fence it because they do not own it. Please may I ask NE to respect the laws of this land because they are there for a reason?

As for the new HLS agreements my initial trawl through some of them shows they all ignore existing public rights associated with s193/ CA1899/open spaces Act 1906/NTActs and the NPAC1949. I had hoped that by now we would have got to the bottom of NEs refusal to instruct its officers on existing public rights and the need to use exempt grazing before requesting permanent fencing and also proving that extensive grazing works.

You say in Theme 3 **Q8 "***Promoting public access and understanding of the countryside is one of the objectives of HLS (the grant scheme administered by NE……it is the applicant's responsibility to check and ensure that they are aware of all the designations and legislation relating to their land, and understand the implications……There is a balance to be struck and the aim should be to find a 'win-win' situation as far as possible."*
Please will you tell me how you check the applicant has complied with these requirements? I would also say that these are misleading criteria to work on because the law will either support a proposal or it won't. Looking for a 'win-win' situation must be within the law not a way of circumnavigating it!

I have attached a current list of commons undergoing what I and many others believe to be both subversive enclosure and fraud.

I hope you can see now that the information and advice contained in your reply to me is just not the same as what is being experienced nationally?

Theme 8 **Q17**
You have noted my inclusion of Lord Neuberger to this correspondence. The reason for that is that I know of his interest in the ability of the public to be able to hold the Executive to account.

As a parish and district councillor for over twenty years, I was fortunate to have as my mentor, a predecessor of Lord Neuberger's, the longest serving Master of the Rolls, Lord Denning. He advised that we did our job without fear or favour amongst other things. Later it was SOLACE who trained me to keep asking the questions until I was happy with the answers.

Clearly at the moment I am not happy, and would like not only answers to the questions above but a clear explanation of what Natural England propose to do in order to address the three problems cited?

I would just say that until these matters are dealt with there can only be questions as to the honesty and integrity of this organisation, especially given the contradictions between officers and the Executive, and the negative partnership working with Hampshire County Council which I have experienced over the last four decades.

I look forward to hearing from you soon that these matters will be expediously dealt with, after such a long period of deprivation to the enjoyment of a public amenity where Broxhead is concerned.

Thank you again

Maureen Comber
Hon Sec. BCA