

Hampshire

R. A. LEVLAND, LL.B.,
County Secretary.

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Tel.: Winchester 4111



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Please quote:

R.7/2/Broxhead/EVM/JP

Your ref.:

Telephone enquiries to:

Mr. Mason

Ext.:

227

13th September, 1977

Dear Mr. Taylor,

BROXHEAD COMMON

I write to seek your opinion about a suggestion that part of Broxhead Common should be fenced for agriculture.

The County Council provisionally registered Broxhead Common as common land; subsequently various people registered rights of common and jointly with them the County Council sought to prove the status of the land before the Chief Commons Commissioner, in the face of objections by owners.

The Chief Commons Commissioner confirmed a number of rights (which had been settled by agreement) over the War Department's part of the Common; the rights of two commoners were confirmed over land belonging to Mr. A. Whitfield to the east of the Lindford/Sleaford Road. These rights were subsequently tested by Mr. Whitfield on appeal and the rights of one person to graze cattle or goats and dig sand over Mr. Whitfield's land (and other land) were upheld. A further appeal against the rights of this commoner has been lodged pending negotiations to settle the continuing dispute.

Pending hearing of the further appeal the commoner, Mr. Whitfield and the County Council have sought to resolve the dispute to avoid further substantial legal costs.

The County Council has been requested by Mr. Whitfield to consider a suggestion that he should apply to the Secretary of State for the Environment for consent to fence a part or parts of Broxhead that he owns. No definitive proposal exists and it is not therefore possible at this stage to say how much land would be fenced and what provision made for access.

Any application to fence would be fully advertised at the time and the Secretary of State would have to consider the application under the provisions of the 1876 Commons Act as applied by Section 194 of the Law of Property Act 1925. An applicant has to show the expediency of his application in relation to private interests and "the benefit of the neighbourhood"; it is on the benefit of the neighbourhood aspect that I write to seek your/your Council's views on the possibility of part of Broxhead being fenced. At the moment the public do not have a right of access to Broxhead Common, except along certain rights of way and the only people having a right to be on Mr. Whitfield's land appear to be Mr. Whitfield and the commoner. Nevertheless, under Section 194 of the 1925 Act, the erection of any fencing which would prevent or impede access to the Common is unlawful unless it is authorised by the Secretary of State.

/ ... 2.

The Secretary of State will be concerned with the "health comfort and convenience of the inhabitants of any cities, towns, villages, or populous places in or near any parish in which the land proposed to be enclosed, or any part thereof, may be situate." A Public Inquiry may be held if appropriate.

The Royal Commission on Common Land 1955-1958 made numerous recommendations about the future of common land, the nature and extent of which is emerging under the provisions of the Commons Registration Act 1965 which set up the machinery for recording details of common land in a register maintained by County Councils. Specific recommendations were made about Inclosure, Public Access to and Enjoyment of all Common Land and Management and Improvement Schemes. For the sake of completeness I enclose a copy of the relevant Royal Commission recommendations - Nos. 23 and 25-43 are particularly relevant to the present issue.

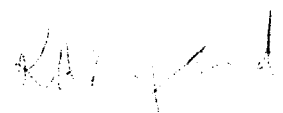
Fencing is essential for efficient mixed farming; Mr. Whitfield seeks to farm his part of Broxhead Common for grazing with the usual arable rotation; he considers stockproof fencing essential. 80 acres of Mr. Whitfield's land (a total of about 200 acres) was enclosed in the early 1960's by a previous owner and that action was later contested under Section 194 (and is still in dispute awaiting the outcome of the present commons registration matters) and the fenced area is presently under grass and is grazed. That fencing was erected without consent and as things stand at the moment, the fencing is still unauthorised.

The traditional appearance of Broxhead is of heathland which is increasingly rare. All parties involved in the present negotiations have been advised by the Nature Conservancy Council, who urge the importance of conserving certain parts of the unfenced common, whilst other parts are not rated highly from a purely conservation viewpoint. As there are no definitive fencing proposals one cannot say with certainty at this stage whether the particular area identified by the Nature Conservancy Council would be affected by Mr. Whitfield's proposals. However, it is fair to say that any further agricultural reclamation and fencing would probably be directed to that particular area, but that Mr. Whitfield himself wishes not to disturb or interfere with rare plants and animal habitats. Mr. Whitfield's application to the Secretary of State would be based on the grounds that fencing would allow the land to be put to agricultural use and would also reduce the risk of fires, litter problems, and prevent unauthorised camping by gypsies and itinerants which apparently still occurs on some parts of the Common. It is said that if Broxhead could be cultivated in this way the appearance of the Common would be improved to the benefit of the neighbourhood.

One ancillary issue which you/your Council might like to bear in mind is that if Mr. Whitfield's proposals regarding fencing are acceptable he intends to provide 5½ acres for use by the local community for cricket and other games.

It is against this background that I seek your/your Council's view on the possibility of fencing. The matter is somewhat urgent and I would appreciate a reply by the 4th October at the latest. If I can be of further assistance please contact my Assistant Solicitor, Mr. Mason, on the above extension.

Yours sincerely,


County Secretary

TO: The Clerks to Headley Parish Council
Whitehill Parish Council
Kingsley Parish Council

• The Secretary and Solicitor of East Hampshire District Council
Councillor B.L.P. Blacker

cc. Sir James Scott
Councillor Mrs. E.A.L. Cole