

LAND SUB-COMMITTEE

22ND JUNE, 1978

BROXHEAD COMMON (EAST)

Report of the County Secretary

- (32)  
R7 Broxhead
- ITEM 1**
1. The Recreation Committee have endorsed the terms of a settlement of a dispute, in which the County Council have been involved as Commons Registration Authority under the 1965 Act.
  2. Broxhead Common consists of about 400 acres and lies wholly on a sand outcrop, with surfaces above 300 ft. in the southern part of the common (see the attached map which identifies the different areas featured within the Report). In the north-west of the common a shallow escarpment facing mostly westwards forms the most abrupt slope. The semi-natural vegetation is heathland or, depending on management (or lack of it) various stages in the succession to oak woodland. The open heathland provides the most extensive views, over heather and gorse dominated landscape, with tree clumps and fringes. Broxhead is a nationally diminished habitat often reduced to isolated blocks and here the land supports, for instance, breeding Dartford Warblers and Smooth Snakes and Sand Lizards. About half the common is owned by the Ministry of Defence and primarily used for military training; the remainder (189 acres) is owned by a farmer and it is in connection with this part of the common that this Report is concerned.
  3. In the 1950's the County Council commissioned Dr. Tavener of Southampton University to survey all common land in Hampshire, in preparation for the Royal Commission which was then being set up to make recommendations to Parliament, now embodied in the 1965 Act. That survey was published in book form as "The Common Land of Hampshire". Broxhead is mentioned in Tavener's book and as no one had then taken action to register the common, the County Council did so and asked the Parish Councils for evidence as to the exercise of rights in substantiation of the registration. Later 48 people registered rights and the Broxhead Commoners Association (BCA) was formed.
  4. The owner, who by then had ploughed and fenced 80 acres of the common, objected to the registration and the dispute was referred to the Commons Commissioners who were obliged to hold an Inquiry into the status of the land. Some of the fences were ripped up by the putative commoners because the required statutory consent had not been obtained, and the resulting County Court Injunction action was adjourned pending a finding as to the exact status of the land. The County Council and the B.C.A. agreed to share equally the costs of the Inquiry and any subsequent legal proceedings as the onus of proof was a joint responsibility.
  5. The Commons Commissioner, after a hearing lasting ten days, found in favour of two commoners and the registration was upheld. (A dispute as to the Ministry of Defence owned land was settled on terms which gave 15 commoners rights over the western part of the common).

6. The owner appealed against the Commissioners findings and succeeded only as far as one of the two commoners' claims was concerned, and the other claimant's right to graze three cows or three goats and the right to dig sand - a right evidenced in old Deeds - was upheld. The owner lodged a further appeal in the Court of Appeal.
7. The Rights of Way Sub-Committee recognised the clash of interests, which were basically conservation on the one hand and the wish of the farmer on the other to make the best use of the land; the owner wished to fence parts of the un-cultivated parts of his land and re-claim by ploughing a further area to consolidate his existing cultivated area, a course of action which might make economic sense but would seriously deplete the natural history and ecological qualities of the land.
8. The County Council, supported by the B.C.A. took an initiative to reach a settlement of the dispute which by then had a prospect of reaching the House of Lords, because complex novel and archaic conveyancing points were in issue. The Nature Conservancy Council (NCC) was requested to survey the part of Broxhead in dispute, and the resulting appraisal revealed that the area the owner had in mind to re-claim coincided with the area that was the most valuable and scarce as a wildlife habitat. The NCC pointed out that the United Kingdom has an international responsibility to conserve land like Broxhead which is becoming increasingly scarce in Europe. The owner's proposals to plough further areas and therefore fragment the common have prevented the NCC from designating Broxhead as a Site of Special Scientific Interest which it otherwise deserves.
9. After lengthy negotiations terms have been agreed by all parties and they were approved by the Court of Appeal on the 24th May, 1978. The effect of the settlement is as follows:-
  - (a) the registration by the County Council and the Commoner is confirmed with the exception of the already ploughed and fenced 80 acres; the Commoner has released his rights over the 80 acres thereby extinguishing them. The County Council and the Commoner will support an Application by the Owner to the Secretary of State to authorise the existing fences.
  - (b) The County Council is granted a 20-year Lease at £200 per annum with upward reviews in the 5th, 10th and 15th years, of all the unfenced and uncultivated parts of the common, in order that they can be held and managed as a local nature reserve with "appropriate" public access. The County Recreation Officer intends to prepare a Management Plan in consultation with local interests and the Hampshire and Isle of Wight Naturalists Trust, who would undertake, in co-operation with the County Council, to rehabilitate those areas of the common which have suffered from neglect in the past.

(c) Five acres of the common would be sub-let, at a pepper-corn rent, to cricket clubs or sports associations approved by the owner, for use (subject to the granting of planning permission) for cricket and associated recreational purposes. This provision reflects the long standing wish of the owner to provide land for community use. The Lindford Cricket Club have already approached the County Council, they have been requested to approach other bodies to ensure that maximum non-conflicting use is made of the area in question, which requires levelling and clearance. The Club envisage the provision of a basic pavilion including shower, toilet and social areas which would require the consent of the Secretary of State as they would be on common land. The five acres in question is at the foot of the Broxhead "plateau" and does not form part of the area of natural history value, and so does not prejudice the conservation of the remaining area.

(d) The owner will pay two thirds of the costs of the County Council and the B.C.A. in connection with the hearings before the Commons Commissioner and the first appeal. This is a very favourable settlement considering that the owner's objection to 47 rights has succeeded.

(e) The outstanding County Court Proceedings are withdrawn subject to each party bearing their own costs.

10. The settlement is the culmination of more than a decade of dispute, which had a prospect of going on longer. The hope is that the arrangements outlined above will permit the fullest possible range of interests to be accommodated:-

The owner may use his enclosed area with the prospect that the overall package now agreed should enable him to obtain the Secretary of State's consent to authorise the fencing, with support from the County Council, because he has had due regard to the "benefit of the neighbourhood", the statutory test which he must satisfy.

Further ploughing of a scarce wildlife habitat, which required no consent and which could proceed forthwith, is averted and arrangements will be put in hand to secure the rehabilitation of the common. There is a prospect of a designation of Broxhead as an S.S.S.I.

The rights of the commoner will be confirmed over the common with the exception of the enclosed 80 acres; as part of his separate negotiations with the owner the commoner has, however, agreed not to exercise his rights during the period of the County Council's Lease.

The conservation and recreation interests of the community are served in so far as the majority of the land is in public hands for a period of at least twenty years.

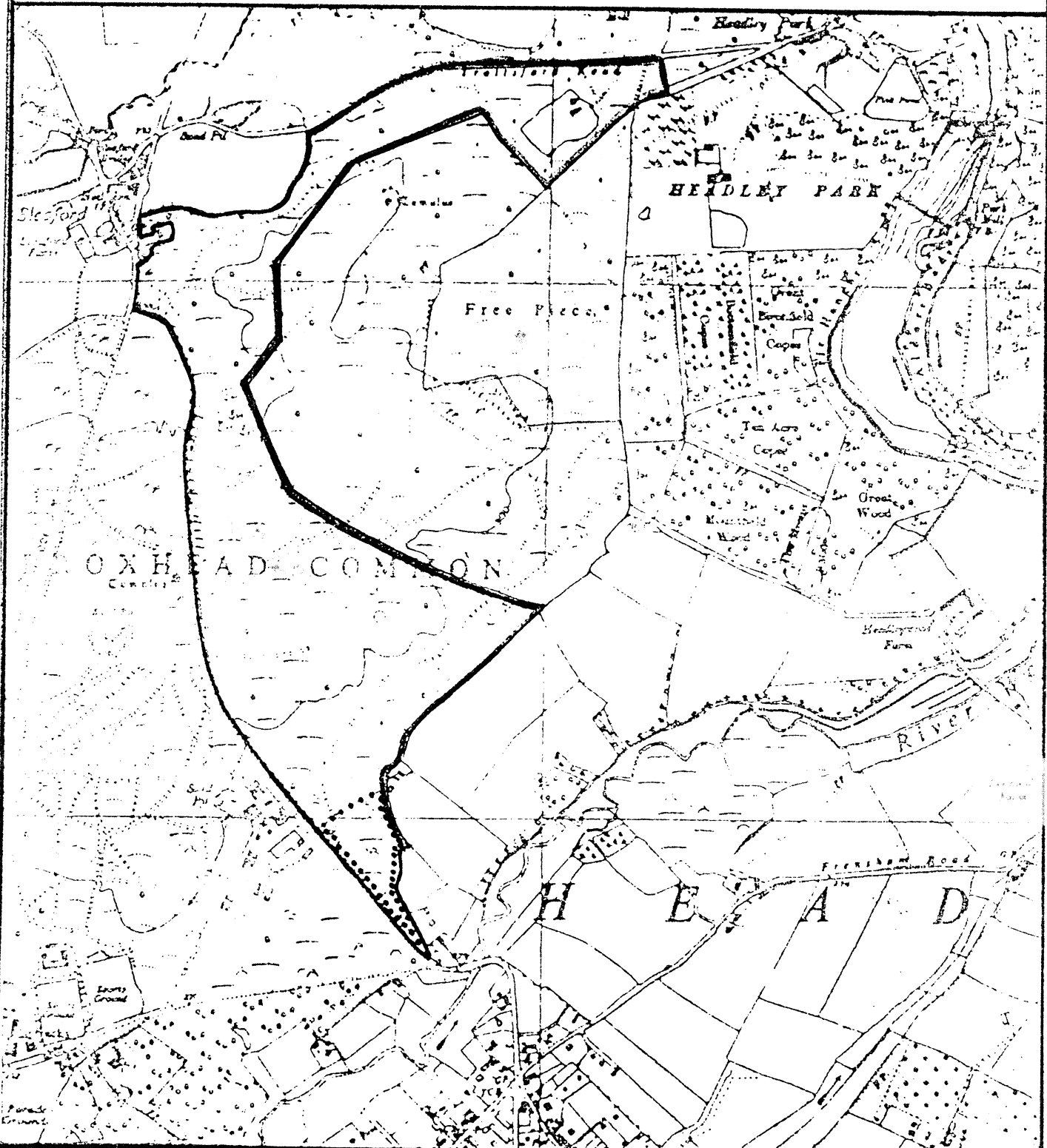
this was far from favourable. Whitfield had appealed these costs to the Court of Appeal where the case was dismissed, so he would have had to pay in any case.

**RECOMMENDATION:**

That the Land Sub-Committee note the terms of settlement outlined in this Report and accordingly authorise the completion of a Lease of approximately 189 acres of Broxhead Common shown on the map accompanying this report for twenty years at a rent of £200 per annum with upward reviews in the 5th, 10th and 15th years, together with a sub-letting at a peppercorn rent of approximately 5 acres to a cricket club or similar body, both on terms to be approved by the County Estates Officer.

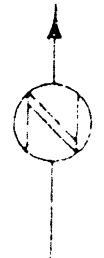
6/9

# BROXHEAD COMMON (EAST), HEADLEY



SCALE 6" TO 1 MILE

Based upon the Ordnance Survey map with the permission of the Controller of H.M. Stationery Office  
 Crown Copyright reserved



O.S. No.  
**SU 8036-8037**

PARISH  
**HEADLEY**

|   |                           |
|---|---------------------------|
| HAMPSHIRE COUNTY COUNCIL<br>ESTATES DEPARTMENT    |                           |
| PLAN No.<br>6/107                                 | DATE<br><b>JUNE, 1978</b> |
| B.J. COALES, E.R.I.C.S.<br>COUNTY ESTATES OFFICER |                           |