

Damian Hinds,
House of Commons
LONDON
SW1A 0AA

14th February, 2013

Dear Damian,

Reply to Richard Benyon re the Enclosure of Common Land

First of all may I thank Richard for his detailed reply however not unusually this has provoked more questions than it answers. In responding I will keep to the format of his letter so that there is less room for confusion.

1. I note that the Environmental Stewardship Scheme is open to all land managers and farmers across England to support them in looking after the countryside. It is managed by Natural England on behalf of Defra.

Question Commoners are the land managers as far as the commons go so why are they not being initially consulted before the consultation is rolled out to the public who actually have no legal status where most commons are concerned?

Question Why is Defra not making sure that its own guidelines are followed in this respect?

2. The primary objectives of the scheme are, Conservation (bio-diversity), maintenance and enhancement of landscape quality and character, protection of the historic environment, promote public access and understanding of the countryside, protect natural resources.

Question How can the enhancement of the landscape quality and character be said to qualify if the land is ultimately enclosed for maintenance? Fences not only completely change the character but also prevent or diminish public access. As enclosure is approximately standing at 50-1, why is the guidance from Defra not being applied by either Natural England or the Planning Inspectorate?

In addition common land is naturally protected from enclosure by the division of interest between the land owner who owns the soil and the commoners who have certain rights. If the status quo is to be altered the immediate effect is to remove this protection.

There have been many Acts of Parliament with regard to safeguarding commons as open spaces for the public in which to take 'air and exercise' or for recreation. Indeed the principal object of the 1876 Act was to make further provisions for bringing under the notice of the Inclosure Commissioners and of Parliament any circumstances bearing on the expediency of allowing the inclosure of a common and that inclosure in severalty as opposed to regulation of common, should not be made, unless it could be proved to the satisfaction of the Commissioners and of Parliament that such inclosure would be of benefit to the neighbourhood. Indeed the Commons Commissioners were given facilities enabling them to regulate, improve stint and otherwise deal with commons without wholly inclosing them. This important Act strengthened two principles that were recognised in the General Inclosure Act, 1845. One was the intention to discourage enclosure; the other was covered by the phrase 'benefit to the neighbourhood'.

Question Why has this Government seemed fit to abolish the Office of the Commons Commissioners?

Was this in either the Lib Dem or Conservative manifestos?

3. You say that many commons are owned or managed by Wildlife Trusts or local authorities.

Question Would it not be more correct to say that they are not actually owned but vested in the local authority for protection from encroachment and the like?

I would question how it is that some commons eg Whitchurch Heath or Prees Heath in Worcestershire appear to be owned by Butterfly Conservation when in fact they can be no more than 'vested'. It seems to me that the line between the division of interests occasioned by an owner on the one hand and the commoner on the other have become blurred to the point of extinction. Is Parliament aware of this?

Question You say that many commons require attention to restore and maintain and yet this requirement is not new, so why have so many common deteriorated while under the stewardship of Natural England and the Wildlife Trusts?

4. You say that "*the signatory must go to reasonable lengths to contact all graziers or persons who are entitled to exercise rights of common*", when in fact it seems to me it is the commoners who should be taking the initiative as they have a legal interest in the soil.

Question Please will you explain why managers seem to have a right to upset the status quo and from whom have they obtained that right?

5. It appears to me from the first paragraph of the second page that the legislation is being infringed since it states that "the rights of any commoner who does not support the HLS cannot be infringed." **I can say that they are being infringed and in many instances inclosure is not supported by them.**

Question If 'Natural England does not consider extensive grazing arrangements as the only appropriate management for open habitats' why is it that 50 such schemes have already been approved by the Planning Inspectorate? It is quite obvious that they are only considering the application by the local authorities or the wildlife trusts as giving a misguided strength to those applications. In doing this they are actually altering the recognised protection for these open spaces given by many Acts of Parliament which in fact can only be altered by Parliament itself. It may help if I quote from Dr Tavener "*Since the passing of the Commons Act, 1876 Parliament has repeatedly shown its appreciation of the importance of maintaining the area of the common lands in this country by inserting in Acts providing for the acquisition of lands for various public purposes and in other Acts, provisions restricting the right of public authorities and other to inclose common land, and by making every individual proposal for such inclosure subject to the express sanction of Parliament or of some other Authority, usually the Minister.*

In view of the importance of these provisions, it is proposed to refer to them in some detail.

- *By the Law of Commons amendment Act, 1893, abuses of the Statute of Merton (Commons Act, 1236), and the Statute of Westminster (Commons Act 1285), were checked. Inclosure ('improvement') of commons by lords of the manors was prohibited, except with the consent of the Minister of Agriculture who had to apply the 'benefit of the neighbourhood' test."*
- The Copyhold Act, 1894
- Light Railways Act 1896
- The Commons Act 1899
- Development and Road Improvements Act 1909
- Forestry Act 1919

- Land Settlement (Facilities) Act, 1919
- Law of Property Act 1925
- Royal Commission on Common Lands 1957
- Commons Registration Act 1965
- Commons Act 2006

From all of these it can be seen that the enclosure on our commons should be an absolute last resort rather than a first.

It is not sufficient for the present government to say that consent for carrying out "restricted works" should be expected to contain appropriate and sufficient means of access for the public. Neither is it just a matter of having strong views on the subject.

It is a matter of adhesion to the law of this land which has sought to protect the public interests over and above anybody's view be it that of Natural England or some other government body or organisation.

It is a lamentable fact that our common lands are being enclosed by stealth and force through the bad practice of bypassing Parliament. Is this the reason that there was such haste by this government to abolish the Commons Commissioners?

I should be grateful if you will pass my letter to the Minister.