



ABBEYLANDS

Kilnside Farm, Moor Park Lane, Farnham, Surrey. GU10 1NS

t: (office) 01252 714426 m: 07860 718464

e: info@abbeylands.net www.abbeylands.net

Access Land and Rights of Way Consultants

for

Public Authorities and Private Landowners

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Specialist Research and Boundary Surveys

Ms Lyn Tucker
Senior Legal Officer
The Council Offices
Castle Street
Thornbury
South Gloucestershire
BR35 1HF

12th September 2011

Ref: RJM/sjw/2241

Your ref L3/LT24/ADCP/CR 66

Re: Hawkesbury Common CL38 and others

Dear Ms Tucker

Further to your letter of the 18th August I have the following comments.

1. The belief of lawfulness is like ignorance, no argument or defence in law only a possible defence of malfeasance.
2. Whilst I am sure you are correct that South Gloucestershire CC can be the registration authority for the whole of CL38 by agreement. It is the management of the scheme that is in question and under what powers the vesting of the management can be varied by the successor of Chipping Sodbury RDC in whose name the Scheme was made.
3. I was specific about CL38 and I am aware that this area is not included in the Scheme of Regulation. It is the ownership of the fee simple that I was trying to adduce as I am informed that it formed part of an Inland Revenue Inheritance settlement and is not owned by G.W.T.
4. My position as to para. 3 14th August 2011 stands due to the continuing lack of conclusive evidence and understanding.
5. It is the Council's interpretation of the byelaws in relation to equestrian access for lawful personal recreation as being in breach of the byelaw that is being challenged. The powers under the Scheme are very specific and are in respect to the benefit of the horse and the commercial exploitation of the common and not for the removal of the right to public recreation on horseback. As in the judgement in *ex parte Billson* 1998 the existence of a partial and specific exclusion implies the right for any other equestrian use (ie non commercial).
6. With regard to the provisions of the Acquisition of land Act 1980 if land acquired for one use eg public recreation is then set aside for another then that is appropriation.



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In my opinion there is no argument if the dominant tenement of the management of the common is for public recreation as set out in the Scheme but if that dominant position is changed and the land is being primarily maintained for nature conservation and that has been prioritised over public recreation by the council as vested managers then, that is in my opinion appropriation for another purpose.

This position is made abundantly clear in the regulation for SSSIs in CRoW sch. 9 S 28G (ii) the duty is to have regard inline with the reason for holding the land. You will of course know that existing public access is not affected by any of the SSSI legislation or the EU Habitat Directive except in the power vested in NE to divert a right of way as it applies solely to the landowner, tenant or lessee in any plan or project on the land.

7. I have advised my clients accordingly in their claim for highway rights and that the council have agreed to facilitate that application through the RoW officer Nicola Chidley.
8. Thank you for the Commons Commissioners decision letter though it still leaves open who was or is the beneficiary of the CL338 land and what were the public benefit conditions if it was an IHMRC inheritance settlement as that is the normal reason for allowing the settlement. I have a number of examples and all of them are subject to irrevocable S193 deeds.
9. As to the fencing and other works on the Scheme common (CL38) this falls into three areas:
 - a) Encroachment by adjacent landowners to which your officers seem only too aware.
 - b) The erection of enclosure, car park and fencing and gate to Plumbers trench in the vicinity of Lodge Farm (The Lodge) by SGCC or its predecessor.
 - c) The provision of by pass gates on the common where these must be part of the highway with exchange land (HA 1980).

I can find no legal consents for any of these and hope that the council can verify the legal position.

Once again thank you for your prompt replies and I hope that the two pronged way forward agenda agreed on the 16th August with your officers will lead to a satisfactory conclusion for all especially the equestrians who feel a little embattled at the moment.

Yours sincerely

Bob Milton MIPROW
Independent Advisor on Common land and Rights of Way
c.c. Amanda Deeks, others