Dear Mr Morse,

Fraud and Misapplication of Funds by Natural England and Local Councils

I am really sorry to have to write to you with regard to a few problems which have all come to a head this year as far as I am concerned.

1. The first is a persistent attempt by Natural England in collusion with Local Councils and the Planning Inspectorate to apply funding from HLS Agricultural schemes to enclose our common land.
   I believe this is fraudulently gained because HLS funding is for agricultural purposes and not for the application of Statutory Duty. Councils who have such land vested in them because there is no owner, are required only to see that the land is not encroached upon and the public access to the land is not denied by the erection of unauthorised fences etc.

   I believe that because Councils do not own this land they cannot rightfully apply for such funding.

   Notwithstanding the Planning Inspectorate seem to be obliged to support these applications. They do so without seemingly any regard for the integrity of the management methods applied for, or the wider issues of Equality and Diversity, Public Access, and in some cases the complete absence of consultation with existing Commoners who are of course the people with a legal interest in the land.
   The Inquiries which are often held before all the consultations and pre-inquiry procedures have been accommodated, must be an unnecessary expense on the public purse. (See Padworth Common, Berks which was recently adjourned for these reasons).
   In fact this whole issue has come about because right from the beginning of the Nature Conservancy Council circa 1970's, which morphed into English Nature before changing again into Natural England; the theory was that wildlife should be left undisturbed. To that end common lands have been left unmanaged and ignored and allowed to overgrow. The latter created a natural deterrent to access by the public who in most cases have a legal right to do so. However the experiment after four decades has not worked, so the Wildlife Trusts which have flourished over the years, have decided that the best way of controlling the vegetation is to graze it with cattle, hence the fencing requirement.
   Many of us feel that this particular method is self-defeating as livestock are indiscriminate when it comes to rare plants or ground nesting birds etc. But most of all we are concerned about the inhibition to public access it creates, particularly for horse riders.

   The point is that this is all costing public money at no thought by the quango of Natural England, that in fact this initiative is not in the public interest generally speaking. They continue to make these applications for the fencing which are no doubt paid for by public funds. Needless to say such funds are not available to the public objectors.

   In addition Councils are claiming to own common land even though they are not able to show pre-registration of title or the necessary signed Statutory Declaration of such ownership. I would question how they are able to obtain Land Registry documents without these basic requirements?

   In a nutshell I am concerned that the HLS funding is fraudulently obtained for a project which is not well received by the public who are being steamrollered by the partnership working of NGO's into putting up with a management system they have not asked for and do not want.

2. It may be that this whole thing has come about because of the misinformation put about by Councils such as Hampshire County Council. Over the last forty years they have told the public that:
   a) The records of the 1910 Finance Act for Broxhead Common had been burnt in the blitz. I eventually discovered that they had not been and are to be found in the National Archives and Hampshire Records Office.
   b) That 80 acres of Broxhead Common were allowed to be fenced by order of the High Court. In fact that turned out not to be true. What they were referring to was a Consent Order in the Court of Appeal 1978.

c) I obtained various copies of this Consent Order but it was only within the last twelve months that I discovered that the pages had not been mis-numbered as I had thought, but page 3 was in fact missing!
d) The Schedule to the Consent Order was for Hampshire County Council (HCC) to support the application for the fencing to the Secretary of State if the "landowner" rented the other 100 acres to HCC for an SSSI and incidental use by the public for "air and exercise". In addition five acres of the common would be let to them for a sports ground for the village of Lindford.
e) This is what subsequently happened and it has taken me all of these years to find out exactly what the situation should have been.
f) Having searched in HCC Registration and Legal Filing Departments and even the Appeal Court itself and drawn a blank with regard to the missing page three of the Consent Order, it eventually turned up through a colleague who had made an FOI a couple of years previously.
g) The page was important because it confirmed that the Appeal Court had dismissed the case out of the Court and had not looked at any evidence or made any judgement whatsoever. The Schedule was dependent on the "landowner" withdrawing his objection to the registration. This he had done and the effect was that the whole of the common CL147 became registered common land on 24th May 1978.
h) Notwithstanding no application for the fencing has been made.
i) Even worse is the fact that HCC removed the 80 acres from the register. This is a criminal offence!
j) They have subsequently renewed their lease of the 100 acres every twenty years although I believe they renewed it last time earlier than was necessary.
k) No exchange land has been given for the five acres of common land taken for the sports field.
l) Horse riders have been told that they do not have the right to ride on the common under the terms of the lease. That lease is completely ultra vires.
m) So HCC have permitted fences to be erected obstructing all the little paths and tracks that the public had a right to access, without application to the Secretary of State and in defiance to the wishes of the Commoners and surrounding Parish Councils!
n) They have recently put up signs telling horse riders to keep to the bridleways, such as they are.
o) They have fought eight or nine Public Inquiries with regard to bridleway claims over the common which I have been forced to make in order to try and regularise the use of the common for horse riders in the face of the obstructing fences.
p) The cost to me has been over £100,000 over the years in lawyers fees. So what of the cost to the public whose money has been misappropriated fighting against a volunteer to improve public access?
q) What of the rent paid for the 100 acres over the last thirty odd years which is in any case common land with a customary right of access?

I believe that this is something that the National Audit Office should interest itself in.

The failures of HCC to do it's Duty of care to Broxhead Common and then spend public funds renting the common and fighting for the landowners interests rather than those of the public who pay them, cannot be right. It is certainly not democratic.

3. HCC closed a byway known as Cradle Lane for four years. Between 2008-12 under the RTRA 1984. However sec. 15 says that closure cannot be for more than six months or in the case where there is a utility reason such as the laying of BT cables etc, then the Secretary of State may agree to an extension not exceeding eighteen months at the most. This latter does not apply in this case.
   In fact HCC have made nine consecutive temporary TRO's over this period of time.
   Why this waste of public money? Having made the TRO's on the basis of preventing all motorised traffic they then changed the Order at the last minute to allow the use by motor bikes.
   They had stated that they did not have enough evidence to ban motor cycles.

   I suggested to them that there was such evidence which they should look for considering it was they who had upgraded this bridleway to a Byway in 1987.
   They refused to do so saying that the Definitive Map was definitive.
   I reminded them that they have a Duty to amend the Definitive Map where it is found to be inaccurate. Still they would not help but told me I should put in a claim for a Definitive Map Modification Order if I thought this was the case, and adding that they have a six year waiting list for determining claims. Even I know that the Statutory time limit is one year.

   My research has confirmed that the advice from Defra to all responsible Authorities in 1996 says that wheel tracks are not evidence of vehicle rights and 20 years use before 1930 is required. Highway Committee minutes for 1926 confirm that Cradle Lane was a bridleway and therefore there cannot be 20 years lawful use by motor vehicles before 1930.

   Why, when there can be no possibility that there are rights for motorised vehicles on this lane and they have been informed that they made a mistake to upgrade it in 1987, are HCC continuing to make expensive and unnecessary decisions with regard to its use and the making of nine consecutive TRO's? I rather doubt that any application to the Secretary of State for these TRO's was actually made which would make them illegal in any case, but because they do not answer my letters I cannot confirm.

   Naturally there is a cost involved because they have had two consultations, I do not know why one was not enough, plus advertising etc.

When the latest Order was advertised in the local paper of 29th March this year it said objections should be made to the High Court by 18th May 2012. This seems to have avoided any objection period to the Council itself. I believe this is wrong.

All of these issues must be a cost on the public purse both from the inappropriate use of public funds and also to those of us who are trying to see that the law is adhered to. I sometimes wonder if Hampshire County Council has forgotten that their address is The Castle, Winchester rather than Westminster, when it comes to their adherence and interpretation of English law.

The Local Government Ombudsman, Parliamentary Ombudsman and the Planning Inspectorate all advise that these matters should be taken to the High Court but that begs the question as to why they are there? Surely it is to address these sorts of problems? It is common knowledge that ordinary people do not have the means to go to the High Court for every discrepancy local Councils make. So where is the value in having these organisations if they do not perform their duty to the public by investigating the issues complained of?

I would be most grateful if you could look into these matters please.

Yours faithfully,

Maureen Comber