

# Chilterns Commons Fact Sheet 2

## 'Rights of common' and 'commoners'

Most common land dates from the manorial system of medieval times, when the Lord of the Manor allowed his tenants to use areas of unproductive pasture and 'waste'. This usage became enshrined, over time, as 'rights of common' and the users as 'commoners'.

## These rights include:

- **Common in the soil** - the right to remove sand, gravel, or stone for use on a commoner's holding.
- **Estovers** - the right to remove wood and bracken for fuel, building repair and animal bedding.
- **Pannage** - the right to allow pigs to eat acorns and beech mast.
- **Pasture** - the right to turn animals out onto the common to graze.
- **Piscary** - the right to remove some fish from estate rivers.
- **Turbary** - the rights to cut and use turf or peat for household fuel.

The protection of these rights over the centuries inadvertently protected commons from change and helped them remain rich in wildlife and archaeology.

*"All common land has an owner...the term 'common' refers to the rights held in common by certain people to use the product of the soil of the common, by grazing, cutting turf and so on."\**

# Common land - rights and responsibilities

This fact sheet is one of a series aimed at landowners, commoners, parish councils, local authorities, individuals and conservation groups who are interested in, or responsible for, protecting and managing common land in the Chilterns. The numbers in brackets (#) refer to contact links on a separate reference sheet which will be regularly up-dated.

We hope that this fact sheet will help you understand:

- The historic rights that have helped to protect common land to the present day.
- The variety of designations that may apply.
- The law protecting common land.
- Why commons are so rich in wildlife and archaeology.

## Protection of common land - the legal framework

### Commons Registration Act 1965

The 1965 Act provided for the registration of common land, common rights and town and village greens. Although repealed in part by the Commons Act 2006, the register is still held under the 1965 Act.

### Commons Act 2006

The Commons Act 2006 (#1, #7) revised legislation surrounding common land and covers all aspects relating to its protection. Of especial importance are:

- Section 38 (Prohibition of Works Without Consent)
- Section 40 (Consent Procedures) and
- Section 41 (Enforcement)

The 2006 Act also introduced a new power whereby any individual can apply to a County Court for the removal of unauthorised works (see #8 - Open Spaces Society Information Sheet C2)

### Section 38 (Prohibition of works without consent)

Consent is needed from the Secretary of State for any 'restricted works' carried out on registered common land (#9). Section 38 also applies to land not registered, which is regulated by a Provisional Order Confirmation Act under the Commons Act 1876 or which is subject to a scheme of management under the Commons Act 1899. Restricted works are those which prevent or impede access (including building works, fencing, ditches, trenches or embankments) or resurfacing works (including the laying of concrete, tarmac, or similar.) In relation to any of the above, an application should be made to the Planning Inspectorate, who provide guidance and application forms on their website(#9).

## Section 39

In considering an application the Planning Inspectorate must have regard to:

- The interests of persons having rights in relation to, or occupying the land
- The interests of the neighbourhood
- The public interest (nature conservation, landscape, public rights of access, historic features)
- Any other matter considered to be relevant.

NOTE: NOT ALL SECTIONS OF THE 2006 ACT ARE YET IN FORCE. The 1965 Act is being repealed in stages as it is replaced by the 2006 Act. This process will take some years (see #10).

## Why are commons so rich in wildlife and archaeology?

Much of the land that became common was considered wasteland, as it was either too isolated from the main estate area or difficult to cultivate. Add to this the largely non-intrusive traditional 'management' by commoners exercising their rights and the stage is set for the tremendous diversity of flora and fauna that remains on many commons today.

Being mostly uncultivated and unploughed, many commons still show archaeological features such as drove roads and settlements, and more recent industrial archaeology, such as clay pits from which the bricks can often be traced to adjacent cottages.

## What designations does my local common have and what do they mean?

In addition to the protection afforded by registered common status, further protection or rights may result from one or more of the following designations.

- **Site of Special Scientific Interest (SSSI)** - nationally important sites, designated for their ecological or geological interest. Natural England (#11) works with landowners and commoners to manage these sites to get them into favourable condition. 31% of registered common land in the Chilterns AONB is designated as SSSI.
- **Special Area of Conservation (SAC)** - sites of international importance for their wildlife. They are usually also SSSIs. Natural England (#11) is responsible for providing advice. Almost a quarter of registered common land in the Chilterns AONB is designated as a SAC.

- **Local Wildlife Site (LWS)**. LWS partnerships (#12) survey and designate these locally important sites for nature conservation. Contact your local Environmental Record Centre (#13) to find out whether there is a LWS on your common.
- **Scheduled Ancient Monument** and features included on the Sites and Monuments Register. English Heritage (#14) and your County Council's Archaeological Service (#15) protect these features.
- **Rights of Way** - Your County Council's Public Rights of Way Department (#16) maintains a definitive map of statutory rights of way, and is responsible for enforcement action where those rights are obstructed.
- **Area of Outstanding Natural Beauty (AONB)** - the Chilterns is one of 37 AONBs in England, recognised as areas of the highest landscape quality. The Chilterns Conservation Board (#17) is the public body established to conserve and enhance the natural beauty of the Chilterns AONB.

## Get involved!

Helping to look after your local common can be fun and very rewarding.

The Chilterns Commons Network and The Chilterns Conservation Board are here to help you and your community protect, manage and enhance your common for everyone to enjoy.

For further information, please contact

Kath Daly

Countryside Officer

The Chilterns Conservation Board,

The Lodge, Station Road, Chinnor, Oxon, OX39 4HA.

Tel: 01844 355524;

e-mail [kdaly@chilternsaonb.org](mailto:kdaly@chilternsaonb.org)

[www.chilternsaonb.org](http://www.chilternsaonb.org)



The Open Spaces Society (#7) also offers advice, guidance and useful publications.

The management and protection of common land is a complex legal area - this fact sheet is intended as a general guide only; detailed advice should be sought as and when required.

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\* Clayden, P. (2007) Our Common Land. The Law and History of Common Land and Village Greens. Open Spaces Society.