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THE ACCESS INDUSTRY

Richard Connaughton

In an article on September 14, 2011, "Access all areas – or time to redress the balance?" *Country Life* first drew attention to burgeoning problems affecting country life. The article revealed that Henry, grandson of Sir Arthur Hobhouse, whose 1947 Committee Report formed the basis of the 1949 National Parks and Access to the Countryside Act, had written his own Hobhouse Report 2011 in protest at his grandfather's original intentions being hijacked. The main source of protest arose through mismanagement of the creation of recording and publicising access over private land.

In stark contrast to the laboured single issue examination of the recorded Public Rights of Way, Hobhouse's comprehensive 2011 Report identified a multiplicity of problems and their recommended solutions. The former has been the beneficiary of substantial Government support and publicity while the latter has been ignored.

Country Life revisited the problem on February 29, 2012 in "Access: the right way forward", a review of a CLA Report seeking a commonsense and fair approach to rights of way in the countryside. On March 7, 2012, you published a letter from me, "Redressing the Balance", in which I made a number of additional points to those made by CLA with the intention of prompting a response from Secretary of State DEFRA, which did not happen.

The letter, indicating wider abuse, read as follows:

> "There is a three-stage process to be included in the CLA's list of actions to be taken to redress the Rights of Way balance (Town and Country, February 29). Common-interest groups routinely manipulate bad law, such as the 20 year rule, where spurious claims of 20 years of uninterrupted use of a way can be put before Government inspectors. In such a case, the law requires the Defra Secretary to have convened an impartial, independent tribunal. Instead, the Secretary of State convenes a local public inquiry and frequently appoints a former Rights of Way official as chairman, instead of a lawyer.
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> In 2001, the independent inspectors on the Lord Chancellor's panel were replaced by a cadre formed essentially of Rights of Way officials who, by definition, could not be described as independent. In my experience, Defra has been unreceptive to complaints, arising from their inspectors' decisions, pointing the injured parties in the direction of the High Court. Fearful of the expense involved, they usually capitulate, whereupon the officials take their property."

The next step should be to set out the truth and development of the three following Sections with a view to a commentator drawing upon these facts in order to compile a one page summary.

My credentials for moving this subject forward include: a request from Oliver Letwin MP that I should contribute material to a new Countryside Act; my family's experience in being put through the mangle; my having written a dozen investigative books; as former Head of the British Army's Defence Studies and, following that, freelance work in Information Acquisition. Finally, my Doctorate is in Politics.

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23 April 2012

The Rt Hon Dr Oliver Letwin, MP
The House of Commons
Whitehall
London SW1A 0AA

You asked me to advise you what there is that offends in Natural England's *Stepping Forward* Report of March 2010. I accordingly sketched out a Paper to examine the Access Industry with particular reference to the Juggernaut managed by Government officials and friends.

I will confine this reply to three comments. We learn in our professional life to avoid giving credence to documents where the destination is predetermined and the evidence restricted to the support of that precise argument. The technique is bogus, associated with what is known in the business as Situating the Appreciation. What remains to be shown to us by those responsible for the Report are the options, costs and consequences.

I note the insistence that the stakeholders and others, handpicked and assembled by Natural England, reflected a 'balanced representation'. Others might feel that an approximate ratio of 4:1 delineating the two sides of the argument represents a form of electoral fraud. As one among the minority said: "It was a bloody nightmare. We had to fight to be heard. It was inevitable that we would be outvoted every time". More important was the total exclusion from representation of those who the records identify as ordinary people, the preferred soft targets to be separated from their property.

Natural England's paper required a number of readings to be fully understood. This is not about a formula for closing the Definitive Map to new acquisitions in 2026. There is provision for a five year extension beyond that date and for applications 'on the table' in 2026 (2031) to be processed. Such a proposal is unworkable. The *Western Gazette* has revealed that Somerset County Council's assessment of present applications is forecast to stretch out to 2036, that is if there are no further additions between now and 2026 (2031).

You can understand people's exasperation, particularly when they turn to Officials for advice and assistance only to discover they are invariably doctrinally opposed to what the appellants want to achieve. What is unacceptable is the apparent disengagement of elected members whose constitutional function is to control the excesses of the bureaucracy. Time and money can be expended on Natural England's single issue Fool's Errand yet there has been neither acknowledgement nor recognition of the Hobhouse Report 2011 and its identification of serious, multiple malpractice. I have witnessed the despair, helplessness and hopelessness of ordinary people, bullied and intimidated, often by Government Officials, because they are in the way, having to be moved or forced to succumb due to their ownership of what the unscrupulous covet. I have read the collective nonsense of the leadership of Access Organisations, looked on in amazement at the frequency with which these squeaky wheels have had the benefit of oil supplied by those who should have known better. Where are the good, the decent? If you want a snapshot of how comprehensively bad the situation is in England and Wales you need do no more than read the revolting truth set out in Case Study 3.

With best wishes,

Yours sincerely,

R.M. CONNAUGHTON

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THE ACCESS INDUSTRY

PART 1

1. Part 1 represents the extension of three sets of facts as outlined in:

   - Redressing the Balance, a letter which appeared in *Country Life*, 7 March 2012.
   - Government Inspectors – Wrongful Appointment in Annexe A to The Hobhouse Report 2011.[1]
   - The Problem – A Case Study at Annexe B to The Hobhouse Report 2011.

   There is no intention of examining these topics in detail. They can be read at source.

2. Annexe A to the Hobhouse Report 2011 discusses the illegality of the present cadre of Government Inspectors, of the continuation of the Government's reported denial that is not the case. Annexe B, "a most telling exemplar of the present bad situation" is a Case Study based on my family's experience. It is here not because it is the most extreme of cases, there are countless other similar cases of bullying and intimidation to draw upon, but because the Case Study has been meticulously documented. It cannot be said that the whole cadre of Inspectors are interest driven. What can be said is that this is not the record of but one member but is representative of a cadre in which the delivery of bad decisions is endemic.

3. There had been hope among unrepresented taxpayers that the change of Government would provide them with protection from the aspirations of Organisations and individuals who coveted that which they had. That hope did not come to fruition. The measurement of the performance of the new political leadership reveals it to be as bad as that which it replaced. One of their less endearing traits is the care taken not to be seen and thought of as anti-access, not that access has been defined. They appear to have no

[1] The Hobhouse Report 2011, available from The Book Shop, 14 South Street, Bridport, DT6 3NQ. Tel. 01308 422964. thebookshop@surfree.co.uk priced at £7.50 incl. post and packing.

enthusiasm for the execution of their constitutional role for which they have been put in place, namely, exercising control over Government officials. Evidence of improved performance in the quality of moral courage is a modest expectation.

4. The Government's reluctance for over eleven years to acknowledge the failure to implement its own law is understandable, not excusable. The consequence of the resultant malfeasance is enormous. There has been an overall failure to establish a regime of equality under the law. Section 31 of the Highways Act 1980 is commonly described as "the cheats' charter". In the Case Study, following the professional deconstruction of the Inspector's Decision,[2] DEFRA refused to consider a round-the-table discussion, insisting the injured party take the disproportionate route to the High Court to request a Judicial Review. There, the injured party had to continue funding and making his own case while DEFRA, who sent him there, acted as a successful, hostile opponent.

5. It seems that Judges in the High Court and Court of Appeal regard the Inspector as a *de facto* judge, their tribune of the facts upon which they depend to make linkage with the law. There is not a single legal qualification among the present cadre of Government Inspectors. Judges are seen to come to their judgements on facts upon which they could not and should not have relied. The only course open to challenge DEFRA's undeserved success at the High Court had been to alert Dorset CID. Abuse of public office is a criminal offence.

6. CID considered whether the Judges may have been aware of the controversy surrounding the Inspector's handling of the Inquiry. The Detective Sergeant told the Planning Inspectorate that the Inspector "was identifiable with one side of the argument. This would not have been a problem had the Inquiry over which she presided been conducted fairly and impartially…..the Judge would understandably assume that the evidence before him and upon which he

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[2] *The Fraternity.* A Report of Malfeasance in Public Office. Section 7. The Decision. www.connaughton.org.uk

made judgement had originated from an independent tribunal and represented a fair, impartial, balanced consideration of the facts. However, the evidence I have seen does not appear to corroborate this". The time is long overdue to remove the decision making function of unqualified Inspectors identified with one side of the argument in favour of barristers or solicitors qualified to weigh up evidence properly.

7. There has been a limited number of High Court successes. After losing at a Public Inquiry, a pair of Sittingbourne teachers, Selwyn and Ernestine Lawrence, took their case to the High Court. DEFRA conceded at the eleventh hour. Kent County officials took advantage of the absence of a positive decision. Two new witnesses were identified and the business restarted from the beginning in a Local Public Inquiry under Inspector Alan Beckett, MIPROW. The Lawrences failed again to protect their home. At the ensuing Public Inquiry, officials drew upon Public Money to deny appellants justice, for justice can only be considered open to those fully funded to pay the exorbitant fees and costs. If the reader agrees the Lawrences' experience to be unacceptable in a civilised society, the Sandra Norman case from Derbyshire is worse. Ms Norman won her court hearing at the High Court to which DEFRA appealed, an appeal which three Appeal Court Judges rejected. Derbyshire County Council thereupon called forward two new witnesses who had new evidence. A Local Public Inquiry was therefore convened, the outcome of which can be predicted. These people do not like losing and have unlimited access to Public Funds to continue their obsession until they reach the point when their opponents are broken.

8. It was at the Lawrences' Local Public Inquiry, FPS W2275/7/62 of 21 February 2012 that a challenge arose regarding a public inquiry's authority to consider the existence of public rights of way which is the proper preserve of a tribunal. The Inspector dismissed the intervention in his Decision Letter (para 11) "Paragraph 10(1) of Schedule 15 to the 1981 Act (Wildlife and Countryside) makes provision for the Secretary of State to appoint an Inspector to determine Orders". This argument has been raised before and put down for two reasons. First, in 1981, the Lord Chancellor's Panel was still in

place, effectively separating policy-making from decision-taking and remained in place for a further ten years until it was replaced almost entirely by a cadre of Inspectors drawn from former rights of way officers. In 2000, the Human Rights Act 1998 entered English Law, requiring the Government to establish as a higher duty a process whereby citizens could access a fair, impartial and independent tribunal. This was not the case then and this legal obligation is still to be put in place. A tribunal would normally be expected to be chaired by a solicitor or barrister appointed by the Lord Chancellor, i.e. an individual qualified to assess evidence. There is not one legal qualification among the present cadre of Inspectors which accounts for the frequency of complaints arising from their Decisions. The challenge made of the Inspector's legitimacy is therefore valid. His position is untenable.

9. The Complaints Procedure has been the subject of frequent criticism. On 16 November 2007, Dorset CID received a reply from the Planning Inspectorate which concluded: "Should you wish to pursue the issue how we deal with complaints, it would assist me if you could write to the Inspectorate in your capacity as a private citizen".[3] With reference to the Case Study, the Planning Inspectorate's so-called Quality Assurance (QA) received nine public complaints with regard to the handling of the Inquiry, for which the Inspector was made *persona non grata* in the County of Dorset. The Inspector's colleagues rejected all complaints without explanation except for three, two of which came from former or serving police officers and which were unacknowledged. One was from PC T.J. Poole who lives within the community. He suggested QA's inaction was possibly due to the Inspector operating under instruction. It is inevitable that questions would be raised with regard to independence and impartiality. "Whilst complaints have been made about the Inspector's Decision, there appears to have been no independent review of this decision within DEFRA."[4] County Councillor R.W. Coatsworth, representing the community, wrote in a letter to the Crown Prosecution Service (CPS) how he had "never seen any public proceedings to

[3] Shelton to DS Broadhurst FPS/Y1245/4/7 dated 15 November 2007.
[4] DS Broadhurst, Dorset CID, to Ashley K. Gray, the Planning Inspectorate, 18 October 2007.

match these in terms of spiteful repression of one side and favouring of the other".[5]

10. In Annexe B to the Hobhouse Report 2011, reference is made to the case papers having been successfully put in front of an Inspector of the then Lord Chancellor's Panel in what had been a mock examination. The Dorset County Council Rights of Way officials did not disagree that the appellants had a case but *they* would oppose it to prevent a precedent being created. They showed they were prepared to go outside the law to do so. "It is evident that Officers of the Countryside Access Departments are overwhelmingly receptive to access orientated applications yet appear almost universally hostile to public initiatives which are not."[6] It was from this pool of Officials in 2001 that the majority of the new cadre of Inspectors was created.

11. Setting out here an outline of events leaves the reader free to consider the importance attached to Localism within the Counties. It is not inappropriate to describe the action as a scam, a "stitch-up".

12. The Officials' hostility and opposition to the diversion application served to keep the decision-making process beyond the reach of the elected members for eight years. Once free to act, 85 per cent of the elected members of the relevant District and County Committees voted in favour of making the Order.

13. The next step occurred automatically. All that is required to have a Local Public Inquiry convened is for one dissatisfied individual to object to the decision of the elected members, an individual who need not be a resident of the County. No letters were exchanged in an initiative designed to make winners of the losers. This is standard procedure. It is worth repeating: Article 6(1) of the Human Rights Act 1998 requires the Secretary of State in these circumstances to note: "In the determination of his civil rights and obligations…..everyone is entitled to a *fair* and public hearing within a reasonable time by an *independent* and *impartial tribunal* established by law…" When the Secretary of State's Local Public Inquiry – which is not a

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5 Coatsworth to Hall, 12 April 2009.

6 The Hobhouse Report 2011, p.3.

Tribunal – opened, not one of the statutory components was in place. It is ironic how the Government can be meticulous in its observance of the Human Rights of foreigners in immigration cases but ignores the Rights of its own people.

14. The Government Inspector demonstrated a mindset fully in accordance with what might have been imagined of a Member of the Institute of Public Rights of Way Officers. She was instinctively and doctrinally opposed to what I wanted to achieve. She reversed the Order made by the County's elected members. This one person had been empowered to terminate ten years of endeavour, expense and effort. If such a course of action is considered fair then it should be brought forward. Cut out the Middle men, make no pretence of the existence of local democracy and accept such blatant, political impropriety as "that's the way it is". It is scandalous that the Secretary of State condones such malpractice within her area of responsibility.

15. Dorset CID sent their file to CPS whose representative told me, "she will conduct no further Inquiries. She will retire",[7] as did her mentor in the Planning Inspectorate. DEFRA had arranged a soft landing for their representative. I had no chance of a fair hearing as is also true almost without exception of others who find themselves in a similar situation. The cost of the family's endeavour to restore pre-existing levels of privacy and security to our home is a process we could not afford to repeat. Letters to the Secretary of State and the Minister asking them what they propose to do to resolve this business and rectify the malpractice have all gone unanswered.

[7] Roger Hall to Richard Connaughton. Weymouth Police Station, 14 April 2009.

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PART 2

16. Natural England's commissioned Report NECR035 represented the second attempt to conclude a Study on unrecorded rights of way. The first attempt was abandoned four years ago at considerable cost to the public. The new paper, Stepping Forward – The Stakeholder Working Group on Unrecorded Rights of Way: Report first published in March 2010 was begun on 3 October 2005.[8] The final version is expected to be published in May 2012, commissioned and steered by Natural England.

17. After reading the Report, a Cabinet Minister, widely regarded as cerebrally adept said, "it relates exclusively to the identification of existing rights of way and makes sensible recommendations about this – but does not deal with the question of moving rights of way or of the process for adjudicating about such changes". With regard to allegations of serious problems with the Report, he asked whether I could provide any light on this.

18. The provision in the Countryside and Rights of Way Act 2000 of a cut-off date of 2026 (+5) for the inclusion of so-called unrecorded rights of way on Definitive Maps and Statements arose through insistence that the legal record of public rights of way was incomplete. The cut-off date is yet to be implemented. Neutral observers believe this apparent opportunism to be irreconcilable with fact. The word Definitive infers finality. When Councils set about their recording tasks from 1949 onwards, some took over 20 years to complete these tasks. The investigation into Unrecorded Public Rights of Way had already been completed. In general, country people responded sympathetically and willing to ease the way for access into the countryside for their former wartime comrades-in-arms living in urban environments. It was often the case that all footpaths shown on Ordnance Survey maps were automatically claimed as public. There was a common idea that if a path was shown on an OS map it was public. When Somerset ended their exercise, they had converted over 500 private paths to public, one of which was on the

[8] www.naturalengland.org.uk

land of the Peppard siblings and which would give them more than 40 years of misery. Over a period of time, country people ceased to be the dominant element in the process, that being assumed by urban interests. Today, for example, the Government's advisor on Rights of Way is Natural England, a leftist group from Sheffield. It is people who live in the country who have the principal right to advise Government of access matters relating to where they live.

19. The inherent instability of the Natural England Report is a consequence of a comprehensive failure to produce a balanced, objective and honest piece of work. There is no examination of cost, consequences or options. As a supporter, the Minister should either insist the Report be reworked or abandoned. There are other, more important, related topics for him to address. The undeserved credence afforded Natural England's investigation into so-called lost ways corresponds with the incredulity associated with the emblematic extension in 1981 of the Definitive Map until 2026 and beyond. It goes a long way towards explaining the 2026 debate.

20. The new claimants of country rights quote as their authority for acting as they do, "once a highway, always a highway" – an established maxim referred to in the Dawes v Hawkins Case of 6 July 1860 – "the public cannot release their rights and there is no extinctive presumption or prescription. The only methods of legally stopping a highway are either by the old writ of *ad quod damnum* or by proceedings before magistrates under the statute". What must be established is that the highway was public and not private and evidence of a dedication of the alleged new way to the public by the owner of the soil. There is a number of urbanites who have as their life's mission the discovery and claim of so-called lost ways. In 2012, it is possible to identify a number of reasons why "once a highway, always a highway" is conceptually invalid.

21. Natural England's overtly acquisitive proposals include a number of recommendations for extending the life of lost ways beyond 2026 plus 5. The plus 5 is the number of additional years available to be called upon. This project should be seen as the Access Industry's meal ticket, keeping the door to employment open for what will be a lifetime of work for the most recently

joined colleague. Their Proposal 8 is among the most cynical: "Natural England should be added to the list of prescribed bodies consulted when a definitive map modification order is being considered". This quango's bonfire is overdue.

22. Mindful of the alleged high costs which accrued when this exercise was conducted earlier, DEFRA was asked under FoI how much public money had been given to Natural England over the past 5 years. DEFRA said they did not know – "ask Natural England". It is more appropriate that this matter be the subject of a Parliamentary Question. Costs are not accrued simply by national government but also by local government and victims of the process.

23. Somerset County Council presently has 240 Rights of Way applications to process. The cost of processing each application is likely to be in the region of £5000-7000. The County Council is unable to charge a fee for an application made under the Wildlife and Countryside Act 1981. The South Somerset Bridleways Association (SSBA) accounts for more than eighty per cent of the applications presently with the County Council, most of which are claimed to be lost ways. The ratepayer has a liability therefore to find in excess of £1 million to support this group's recreation. The time and space appreciation reveals that it will take Somerset County Council until 2036,[9] ten years beyond the date when the Definitive Map is due to close, to process the present number of applications. The lost way initiative will now stimulate more claims. Anyone can claim. Natural England has proposed that all claims on the table in 2026 should be processed.

24. The neo-Klondikers struck out at a farm, fixing claims notices to trees and fence posts. There had been no liaison, no discussion. Defending this position Mark Weston, the British Horse Society's (BHS) Director of Access and one of Natural England's stakeholders, said the applications are not in respect of new bridleways which, as a result of inaccurate recording in the past, do not yet appear on Somerset's Definitive Map. "If groups like SSBA don't make these applications the routes could be lost forever." More

9 *Western Gazette*, 19 January 2012.

aggressive than the Open Spaces Society, the BHS's means employed to secure ends is angering not only farmers but also significant numbers of their own members.

25. The case for keeping the Definitive Map open until 2026 is one option, yet it is the sole option considered by Natural England. There has been no discussion of the consequences or reasons why it has become apparent that the most sensible course open to be adopted is to close the Definitive Map to new additions without delay.

26. The Stakeholders' Group photograph shows twenty laughing individuals, laughing presumably at the gullible and their own good fortune at achieving what they have. Every one of these individuals was selected by Natural England. The Minister for Natural Environment, Richard Benyon MP, pro-Access, told Somerset County Council that Natural England's team had "a balanced representation".[10] In a letter to Oliver Letwin MP, he said the way forward on Rights of Way reform would be "based on proposals made by Natural England's working group on unrecorded rights of way. The working group was quite unique in that it contained all the various major stakeholders, but all the proposals it made on changing what can be controversial legislation, were based on a consensus".[11] Both these allegations were untrue. When one of the County representatives was asked to account for the support given to Natural England the reply reveals much of the nature of the people involved in the process. "I feared for my property had I not done so." In addition, there is a recognised problem that the present structure of DEFRA and allies does not provide for impartial adjudication.

27. The so-called "balanced representation" appeared to be 15½ v 4½. "It was 4½ of us against the rest in fractious meetings punctuated by stand-up rows. We were faced with outrageous bullying and intimidation from at least one of the access fanatics from the start, and because the Chairman basically did nothing to stop him, that set the scene from then on. It was a bloody nightmare. As a group, we seriously considered walking out on several

[10] Benyon to Maddox. DEFRA MC 196092 dated 6 September 2010.
[11] Benyon to Letwin. DEFRA MC 258097 dated 24 January 2012.

occasions. We had to fight to be heard at every turn, yet we were the only people representing folk who actually have to live with rights of way over their fields and gardens. It was inevitable that we would be outvoted every time."

28. There were sweeteners but it is bad practice to accept crumbs from the table if that means accepting a body of bad reform. "The only useful things we got in the end were the raising of the evidential threshold for considering a claim, which should never have been allowed to deteriorate to the current nonsense anyway, and the ability to make pragmatic diversions by agreement with the local authority without being overturned by access militants."

29. "The whole infrastructure has been subverted by the Access Industry. Some are worryingly indoctrinated, having as their life's hobby the claiming of 'lost' ways – and all at public expense too. Keeping the Definitive Map open until 2026 to accommodate these 'new' discoveries is a nonsense. As we come closer to 2026 and the possible triggering of an added five years, there will be a tsunami of applications which could take an additional 30 years to clear – good prospects for employment within the Access Industry but at enormous cost to the public. The nature of the disposal of *Ten Days in Somerset*[12] and censorship exercised by the Civil Servants explain why the appointed political leadership appears blissfully unaware of what is happening around them."

30. Two of those numbered among the "4½" were the representatives of the Country Land Association (CLA) and the National Farmers' Union (NFU). Both Organisations represent specific interests. The one interest Natural England failed to represent was that of the millions of ordinary people living their lives in the countryside. Law is a game for the rich which accounts for the reason access bullies focus their attention upon the soft targets of ordinary country people who have no Organisational support, no idea how to deal with those who demand their property and no money with which to protect their homes. Which of the hand-picked stakeholders represented these people's

[12] *Ten Days in Somerset* (www.connaughton.org.uk) was an open letter sent in August 2011 to Minister Benyon, copied to the Secretary of State. It revealed prevalent corrupt practices over a ten day period within this miniscule part of his area of responsibility. Oliver Letwin MP asked to see the response. There was none.

interests? These are real, suffering people with names who, when they approach their MP for support are invariably sent away because "access is Government policy". Among the multitude failed by their Government are Catherine Law of Dartmoor, Ivy Peppard of Somerset, the last surviving of the Peppard siblings and now seriously ill, the Lawrences of Kent, Alan Bowers of Bedfordshire, Ken Jenkinson of Stafford and Anne Just, a farmer's wife, of Derbyshire, where bullying and intimidation had been a contributory factor in her father-in-law's suicide. The span of the Government's access policy is undefined but in actuality condones the widest nationalisation of private property. The absence of moral courage is deplored to an equal degree as the 1939 appeasement. It makes no sense for the Government to be set upon the alienation of the sympathy of their core voters.

31. On 23 February 2012, the Country Land and Business Association (CLA) published *The Right Way Forward: The CLA's commonsense approach to access in the countryside*. They called for a shake-up of the access and Rights of Way system. CLA President, Harry Cotterell, said: "The public rights of way system in England and Wales is governed by a failing bureaucratic and legislative system which is long winded, expensive and completely incomprehensible". The Open Spaces Society greeted the CLA initiative with the screaming headline "Landowners Plan Public Path Grab". These are the self same people who exercised a form of terrorism in Bedfordshire through the process of grabbing a private path. Their hypocrisy is revealed in Case Study 3.

32. Ramblers' Chief Executive Benedict Southworth also responded negatively to the CLA initiative. "At the moment there is a system which manages the fine balance between respecting the need of the landowner against the enjoyment of those wishing to walk in the countryside. If these changes were implemented by the government that balance would be destroyed." Ms Ashbrook, general secretary of the Open Spaces Society added: "What we need is for landowners to respect public paths, and acknowledge that the paths were there first, and for government and local authorities to recognise the immense public, health and economic benefits of the path network and to

invest in it in the interest of all". There is rhetoric and the rhetoric of class warriors spinning out their politics of envy. The CLA presents a natural target yet in reality bullies prefer to concentrate their efforts on those least capable of defying them.

33. Following the publication of the Hobhouse Report 2011, *Country Life* published an article on September 14, 2011 entitled 'Access all Areas – or time to redress the balance?' If the neutral Hobhouse is correct, there is no such thing in place as a fine balance between respecting the needs of landowners and those wishing to walk. Moreover, any development of the misleading idea of keeping the Definitive Map open to '2026' would contribute to severe exacerbation of the situation. The Ashbrook requirement for landowners to "recognise that the paths were there first" is unfounded and imprecise. What is being sought is a blank cheque with which to introduce a measure of indeterminate duration and cost.

34. The CLA is justified in its attempt to enhance the system, improve efficiency and achieve better value for money. Less persuasive is the Organisation's agreement to accept keeping the Definitive Map open until 2026. The caveats linked to that aspiration serve, as is intended, to keep the Definitive Map open towards the end of the century. There is no sound reason why the Definitive Map should not close to additions now. It should remain open until 2026 for the correction of errors, at which point a decision should be taken for the final closure of the Definitive Map in its present state. In recognition of the desirability of achieving Localism, Counties will be empowered to manage the creation and adjustment of footpaths within their own boundaries. Special measures will require to be adopted to come to agreement with cross-boundary paths. Manpower savings created should be fully exploited.

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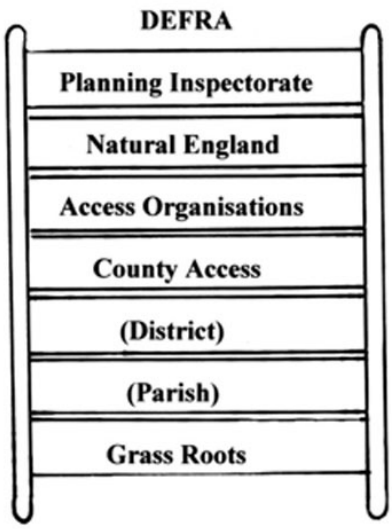
PART 3 – TWO OF A KIND

35. A Model can be a valuable, simple device for the clarification of difficult concepts and evaluation of what has been set down as fact. In her response to Country Land & Business Association's "The Right Way Forward", Ms Ashbrook, General Secretary of the Open Spaces Society and Natural England Stakeholder, insisted the surface of footpaths belong to the highway authority but then went on to express a far more contentious idea. "The legal tests favour the landowner. Councils and Public Inquiry Inspectors readily accept change is in the landowners' interests and an alternative route is acceptable, thus we lose part of an ancient way and its history."[13] I can tell from my experience that is not the case as Ms Ashbrook who was a party to the intervention in Bedfordshire will be aware. There *was* a suitable alternative route available here, yet council officials succumbed to improper pressure to dispossess a homeowner of sole use of an occupation path through his property. The suggestion that the present cadre of Public Inquiry Inspectors "readily accept change" rather than actively resist the diminution of levels of access is derisory. Their authority also extends beyond the Local Public Inquiry.

36. A contributor to the Hobhouse Report 2011 had a message for the Minister: "It is to be hoped that those who have the power to alter things also have the courage to resist the ingrained prejudice of the present administrators and can see that there has to be change".[14] The Model which has evolved here has the structure of a ladder and is titled the Fraternity. Why that should be will become apparent. At the Head of the Ladder are DEFRA's Civil Servants, one of whom is a Natural England



The Fraternity

13 *Farmers Guardian*, 16 March 2012.

14 Alan Bartlett to Henry Hobhouse. Hobhouse Report 2011. 5 July 2010.

Stakeholder. An umbilical linkage connects DEFRA's Civil Servants to an Agency, the Planning Inspectorate and to a second tier of Civil Servants and the Secretary of State's Inspectors. These Inspectors are the self same cuckoos-in-the-nest individuals who, contrary to the law, replaced the Lord Chancellor's Independent Inspectors. In so doing, they filled the gap thereby created to produce a continuous, seamless, top-down connection incorporating politics, communication, control and the fusion of the policy-making and decision-taking activities. Natural England does not share the same politics of Government yet they are recognised and accepted by Government as their advisors on rights of way. Natural England chose to sponsor a major study on Lost Ways. They also chose the stakeholders, unfortunately ignoring from consideration the majority interest of country people.

37. The principal Access Organisations are the Ramblers' Association, the Open Spaces Society and the British Horse Society. They owe their success to the mutual support to be found within the Fraternity, their organisational ability and the availability of funds with which to underwrite success. The access representation is to be found in every County in England and Wales. The anomaly, or contradiction of the opposites, is the presence of thriving radicalism co-existing in what for the most part are centre and centre-right environments. District and Parish Councils are shown here as a remind that the present of activists and sympathisers cannot be discounted. The janisaries, Reporters and Propagandists, are likely to be encountered not only at Grass Roots but also throughout the structure in the same way that the Open Spaces Society has Reporters present throughout the Country. It is down at this level that the most virulent of activists are likely to be encountered, often as neighbours of the targeted party. Information flows up and down the ladder according to who needs to know. The structure is also very effective in preventing unwelcome access.

38. Parties on the Fraternity ladder therefore communicate up and down depending upon from where support is required. Power lies at the top with DEFRA but the powerhouse, where initiatives are created, is at County level. The reason for success here is laxity of control. There is a universal understanding within Government that Officials are not to be criticised.

Rampant abuse is generated as a consequence of this latitude. The operation of this juggernaut is overdue investigation comprised as it is of Government Officials and kindred spirits. It is in principle anti-democratic because those not under the Access banner are bound either to lose, or have to spend an inordinate amount of money to achieve justice. There is constitutional provision for Government control and oversight but, as already mentioned, it is not working.

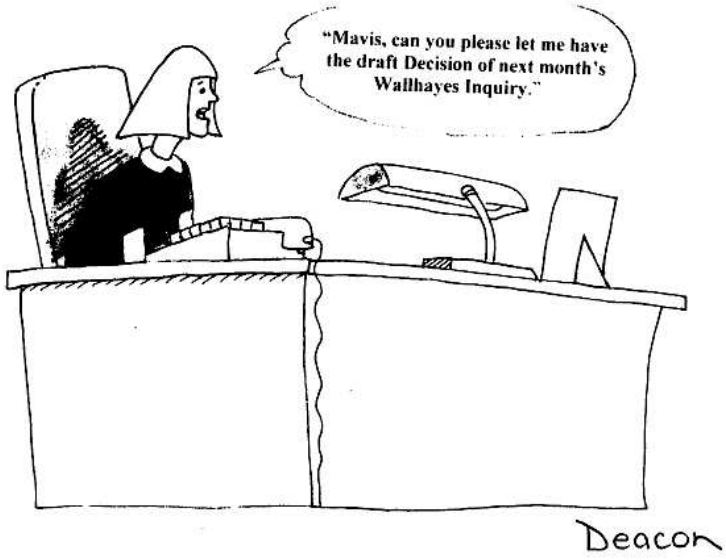
39. Ironically, the Fraternity Model has a twin, the Centralised Democracy Model, as applicable to the People's Republic of China. There is the same configuration except that the Centre is at the head of the ladder, Communes at the bottom with a spread of Reporters and Propagandists. The Director of Propagans is No.5 in the Politburo. The Chinese Model sees full length moves in so far as ideas can be passed down to the Communes from the Centre through the Party apparatus to be embraced on their return as the wishes of the masses. The Fraternity acts as the Party, its moves are more discrete and as a variation of the total theme. Section 31 of the Highways Act 1980 is routinely abused from bottom to top. Both uphold Leftist ideals and principles. Both are inimical to the concept of Localism. We will now show three examples of the Fraternity Model at work.

Case 1 – The Wallhayes Scam.

40. The Wallhayes Case was examined in detail as the Case Study at Annexe B to the Hobhouse Report 2011 where an Open Spaces Society activist put a pub walk through the garden and had it published in the *Dorset* magazine. Setting out a reminder in outline of what happened here is justified in order to counter the allegation of the Society's General Secretary: "Councils and Public Inquiry Inspectors readily accept change is in the landowners' interests and an alternative route is acceptable". That has never been the author's experience.

41. Dorset County Council Officials concurred there was a case for supporting an alternative route agreed locally but would obstruct the application so as to avoid the creation of a precedent. It was the Ramblers' Association and Open Spaces Society who blocked the local arrangement. The Officials appointed a Consultant. Examination of the Consultant's Report as submitted compared to the one released, revealed a censor's pen at work. The law requires the footpath diversion to be in the

interest of all landowners. The Consultant accepted that adopting a 100m field edge path in lieu of a 350m section of path across an arable field was in the owner's interest. The Officials removed that comment, in that way facilitating the Inspector's perverse statement to the effect she found it "difficult to conclude one way or another as to whether the diversion is expedient in the interests of the Estate".



42. The opening of the Local Public Inquiry proved chaotic due to an Official, without the authority of the appellant, amending reference points on the map accompanying the case papers. Why that should be did not become clear until the Inspector released her Decision document. The amendments served to ease the way for the Inspector's Decision as did the deletion from the Consultant's Report. There is strong circumstantial evidence that the Officials knew of some of the detail in the Inspector's Report well before the assembly of the Local Public Inquiry. What is not circumstantial is the absurdity of the comment: "Councils and Public Inquiry Inspectors readily accept change is in the landowners' interests and an alternative route is acceptable.

Case 2 – the Peppard Siblings.

43. The Inquiry process described above is applicable when a minority is unwilling to accept the democratically arrived at Decision of elected Council Members. When Officials persuade the elected Members not to make an Order, the plaintiff has the right of appeal to the "Secretary of State". The term is a euphemism, for the Secretary of State is not involved in the process. An Inspector is nominated from the same criticised cadre that produces Inspectors for Local Public Inquiries.

44. There were six Peppard siblings who lived as a family in what had been their family home since 1850, a two-bedroom Somerset cottage. In February 2011 there were two survivors, Archie (86) and his octogenarian sister Ivy. From 1973, strangers began walking up to their home. The Peppards could not comprehend what was happening but they knew the public had no claim on their home. "What Mr Peppard and his sister have had to endure over the last 40 years is nothing short of shameful. This deaf and elderly man has faced deteriorating health and the County Council has kept this fight on because it can't admit making a mistake. Mr Peppard has been handcuffed, arrested and summoned to Court over this. What he has been put through is outrageous. I've had his sister screaming down the phone to me because police have turned up to arrest Archie. Archie Peppard died on 8 February 2011.[15] Ivy is seriously ill. "They are waiting for me to die", said Ivy.

45. The case papers were reviewed by Susan Doran, a Member of the Institute of Public Rights of Way Officers. The Inspector described the evidence as "finely balanced" which is a cliché meaning "but not good enough to sway me". The principal reason given for the Inspector's refusal to make the Order was the absence of a challenge from the Peppards to the inclusion of the path through their property on the Definitive Map. The County Council has been unable to ascertain the circumstances under which the path was added. The Peppards therefore have no case to answer. The Authority had no statutory obligation to tell homeowners and landowners what they had done and nor did they. The key question arising from a none too clever Decision is: "How could the Peppards have objected to something about which they had no knowledge?" The Inspector appears to have come to a decision taken from the available evidence which no reasonable person would have reached.

46. The process allows no time for time-out for quiet, sensible reflection. The papers proceed up the ladder from the Inspectorate to DEFRA's Legal Advisers. They freely allocate public funds to the appointed London Chambers whose function is to conduct the *coup de grace* on Miss Peppard. They will concurrently tip off one or more of the Access Organisations of progress. All that is needed here is for one good, responsible person so authorised, to say 'enough' and bring this malicious business to a close. There can be few cases in which it is so glaringly obvious that the right thing to do is to concede. True, lawyers will not be paid but that is not DEFRA's concern, particularly when there is no work to be done.

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[15] 'Brave Veteran of Dispute over Rights of Way'. Obituary. *Western Daily Press*, 23 February 2011.

47. We should not ignore the inadequacies of a system which brought paths and bridleways under public control or the use of "too difficult" as an excuse for not righting wrongs. Too often, County Record Holders have been unable or unwilling to provide essential Survey Cards, Definitive Statements in formats other than as a collection of meaningless grid reference or have produced tampered goods. If the Record Holders cannot or will not produce essential documents vital to proving a case, how is the victim going to be able to do so? It is a simple matter for an Inspector sympathetic to the access cause wittingly or unwittingly to find against an appellant due to him or her not having made a timely appeal. There are two sides to this fault, firstly the Inspector's bias and secondly, the failure of colleagues to monitor and regulate properly. There are occasions when the Inspector's authority to hear a Local Public Inquiry has been challenged. There is the recent case of Inspector Allan Beckett responding in his Decision[16] that his authority is derived from the Wildlife and Countryside Act 1981. That is not the case. Different criteria affected the Independent Inspectors in place in 1981 as opposed to the present so-called cuckoos-in-the-nest for whom Article 6(1) of the Human Rights Act 1998 is applicable. It is no accident that the three of these randomly selected Cases point to serious flaws in Inspectors' Decisions. How loud a wake-up call does the Secretary of State require? There is no reason why the present Inspectors should be capable of making an informed decision. One described as "irrational" by a judge remains free to continue causing damage.

48. The Peppard Case is one of countless examples of owners not having been informed their land had been claimed. They had no idea how to prove their path was not in public use. What they did know was not only did the burden of proof fall on them but so too did the exceptional cost. It is a very effective deterrent, leaving the way open to acquisition by default.

Case 3 – Criminality Condoned

49. If you feel the revelation of the calumny of Officials and Inspectors in Case Study 1 or the indisputably revolting treatment of an innocent pair of pensioners in Case Study 2 is sufficient to convince you something evil and improper is happening within the administration of rights of way, Case Study 3 will confirm that impression. We will illustrate the working of the Fraternity's ladder and revisit the nonsense introduced in Case Study 2. "The legal tests favour the landowner. Councils and

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Public Inquiry Inspectors readily accept change is in the landowners' interests and an alternative route is acceptable, thus we lost part of an ancient way and its history." The victims in this Case Study are the 70-ish Bowers family who live outside Bedford. Alan Bowers owns a small second-hand car business. He is a homeowner rather than a landowner although these states are not differentiated separately.

50. This is not the place to indulge in theory other than to say that there are four recurring factors commonly present in the act of dispossessing an owner of his/her property. The *primus inter pares* is: *The practice of identifying, steering and following one or more Champions or kindred spirits (frequently a close neighbour) towards a collective, desired goal.* In this case the individual in question was a Mrs Izzard. The record reveals the County Surveyor's note to Mrs Izzard dated 21st October 1957 in response to a query from her.[17] He told her the path which ultimately became FP28 through the Bowers' garden was an "occupation way, which of course is 'not a *public* path' and is not shown on the Draft Survey Map". In 1983, Alan Bowers purchased the land which would form his future garden. In 1994, he applied to build his present house and received Planning Permission. "There was no mention of a path." There were seventeen objections to the proposal, "eight of which were from one family" he said. "The other objectors were from national organisations and from people not connected with the path." A local Councillor, Howard Lockey, noted that the objections "are substantially from one family even where their married names are different".

51. At Grass Roots, there was an Open Spaces Reporter on the ground reporting to Ms Ashbrook who was in contact with the County Council. In a letter to Mr Glen Kilday, Head of Environmental Services, she congratulated "your Council on prosecuting Mr Bowers for illegally obstructing Maulden Footpath 28. We are delighted by the outcome, although of course, we are sorry you are only awarded costs of £100 instead of £2300… We shall certainly mention this in the next issue of our magazine *Open Space*".[18] It was not just Mao who was strong on emulation. Her letter of 15 April 2003 to Brawn was decidedly frigid and threatening: "I trust therefore that you will advise your Members to think very carefully before proceeding along the line they have chosen and urge them to revoke that decision and consider how they can reopen Footpath 28".[19] Alan Bowers said to me: "It would appear that Bedfordshire Council have been terrified by interfering Organisations

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17 *The Fraternity*. Section 12, Full Circle. www.connaughton.org.uk

18 Ashbrook to Kilday dated 1 February 2000.

19 Ashbrook to Brawn dated 15 April 2003.

such as the Open Spaces Society and other groups to the extent I was simply abandoned".

52. Of the Officials, Mr Bowers observed that it had been abuse "which saw County Council Officials solicit the members of the Izzard family, their friends and fellow travellers to provide statements of use, and to encourage them to find more, and in addition to paying from public funds the solicitors' fees arising whilst ignoring entirely any party likely to come forward in support of my defence". Thus a convergence occurred between bad Officials and bad law, namely Section 31(1) of the Highways Act 1980 which Hobhouse 2011 identified as a "cheat's charter".

53. Officials told the elected members on the County roads and rights of Way Committee that "if they continued to pursue the extinguishment of the path (it was put on the Definitive Map so that it might be extinguished!) they could be subject to legal action being taken against them as individuals". They withdrew their support. Attempts were also made to bully and intimidate elected members of the District and Parish Councils. A groundswell of support for Bowers resulted in over 200 individuals coming forward to be associated with his cause. The County Council's Martyn Brawn sent a detailed letter to each of those supporters: "I would like now to invite you to reconsider your position and withdraw your objection".[20]

54. Bridleway 24 lies 50 yards to the west, and parallel to the disputed FP28 through the Bowers' garden. Ashbrook wrote to the Council that *The Open Spaces Society* "considers that any money spent on improving the bridleway **which is already suitable for public use**, would be a misuse of public funds". If they went ahead, she said they would have to consider whether to seek judicial review of the decision.[21] Both the County Police and the MP insisted the bridleway was safer for the public to use than FP28. The bridleway was improved. The County Council agreed that the path through Mr Bowers' garden was without any doubt superfluous. However, Inspectors appointed by the Secretary of State found that the bridleway proposed as the alternative route was not a suitable alternative.[22]

55. As for the Ashbrook assertion that Public Inquiry Inspectors as well as Councils "readily accept change is in the landowners' interest", there is Mr Bowers' experience on record of 'this cruel form of injustice': "The Government Inspectors before whom

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20 See for example Brawn to Mr and Mrs Harvey MAL/24 dated 8 August 2006.

21 Ibid.

22 Maciejewski, County Definitive Map Officer to William Jace, Parliamentary Assistant to Nadine Dorries MP. MAL/24/AM dated 8 December 2011.

I was called and other accounts I have heard seemed to indicate levels of fairness and impartiality that might be expected from individuals recruited directly from a rights of way fraternity whose entire professional life has been dedicated to the extension of rights of way and access". He told the County Council that in future, "We would wish to be satisfied that due provision had been made for fairness, impartiality, independence and that a proper Tribunal had been convened in accordance with Article 6(1) of the Human Rights Act 1998".[23]

56. For his efforts to protect his home and property, fines from the County Court and Legal Costs accounted for £77,000 – Mr Bowers' life savings. He left Court with a Criminal Record. There is no doubt that the wrong man was punished. This is an indictment of the present legal system and of those who have corrupted the process. No countryman is safe. Evil such as this will persist for as long as good men and women are content to do nothing.

57. Questions are being raised of a Government's performance in supporting their natural opponents at the expense of loyal countryside support. Throughout the duration of this Parliament, there is no record of there having been a single productive exchange on behalf of countless victims between their MP and the Secretary of State and Minister. Support is actively being given to those intent upon nationalising private property for that is believed to be electorally popular. A common view to have emerged from Natural England's exercise in taking DEFRA along on this fool's errand is: "They are scared of being accused of being anti-access and identified as tweedy Tories". Appeasement does not work. The search for Lost Ways is an excuse for ignoring what is comprehensively wrong with the system. As can be seen from the Case Studies, the inventive friends of Natural England need neither encouragement nor support. The Hobhouse Report 2011 and the CLA's Report are explicit in pointing out where the wider problems lie. The priority is not the finding of lost ways but rather, lost values.

[23] Bowers to Mr Adam Maciejewski, Country Access Team, Bedfordshire Council, 5 January 2012.