

# **Brimpsfield Parish Council**

**Drop-in Information Session**

**Wednesday 20<sup>th</sup> August**

# Outline

- Background and Purpose
- Land Management Policy Proposals
- Q & A
- Legal Framework - Common Land
- Q & A

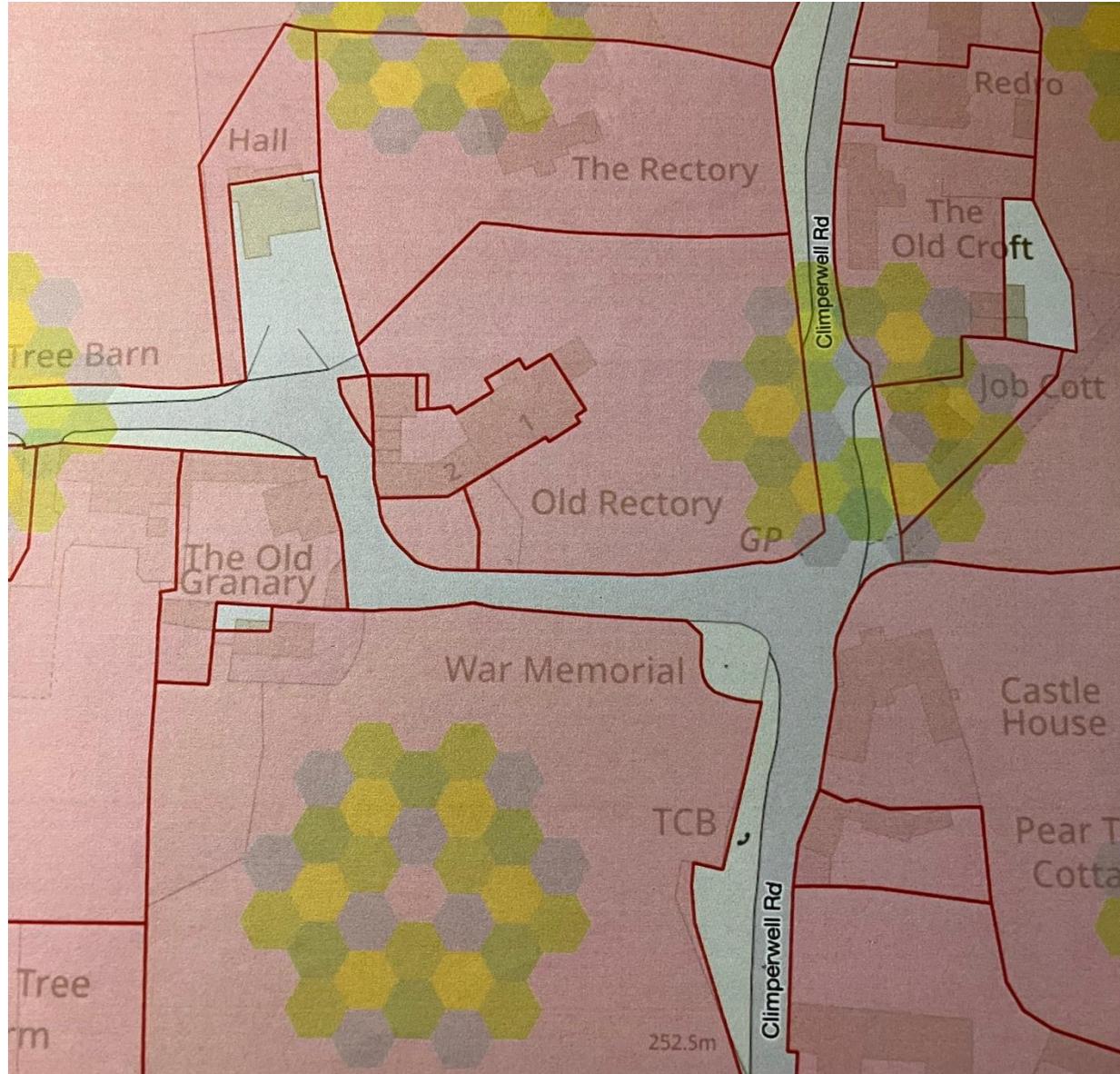
# Background

The Parish Council is the landowner for:

- Brimpsfield Village Hall and the surrounding parking area
- Three areas of registered common land at both Brimpsfield and Caudle Green. Both areas are designated as registered common land under the Commons Registration Act 1965 and is subject to statutory protections under the Commons Act 2006

The Parish Council also takes responsibility for the upkeep of the land:

- The War Memorial in Brimpsfield is located (the war memorial is listed as a Parish Council asset)
- The extended grass verge in the centre of Brimpsfield including the old telephone box (also a Parish Council asset). This land is part of Gloucestershire Highways' responsibility.



# Purpose

- Establish plans to ensure the Council meets its responsibilities
- Clarify lawful and unlawful uses and expectations in the parish's use of the facilities.
- Support biodiversity, safety and sustainability.
- Engage the local community and respect historic usage.
- Ensure responsible stewardship of the Common Land.

# Access and Use Proposals

- Brimpsfield Village Hall

- ❖ Visitors to the Village Hall, Brimpsfield Church and other local communal areas are welcome to park in the car parking areas on a temporary basis for a few hours at a time. Any regular parking, not in connection to use of the Village Hall, must be pre-approved by the Village Hall Committee.

- War Memorial and extended grass verge in Brimpsfield

- ❖ Grass areas to be kept free of any parking or other obstruction at all times. Save for temporary structures supporting village events and celebrations, with the prior approval of the Council.

- Brimpsfield and Caudle Green common areas

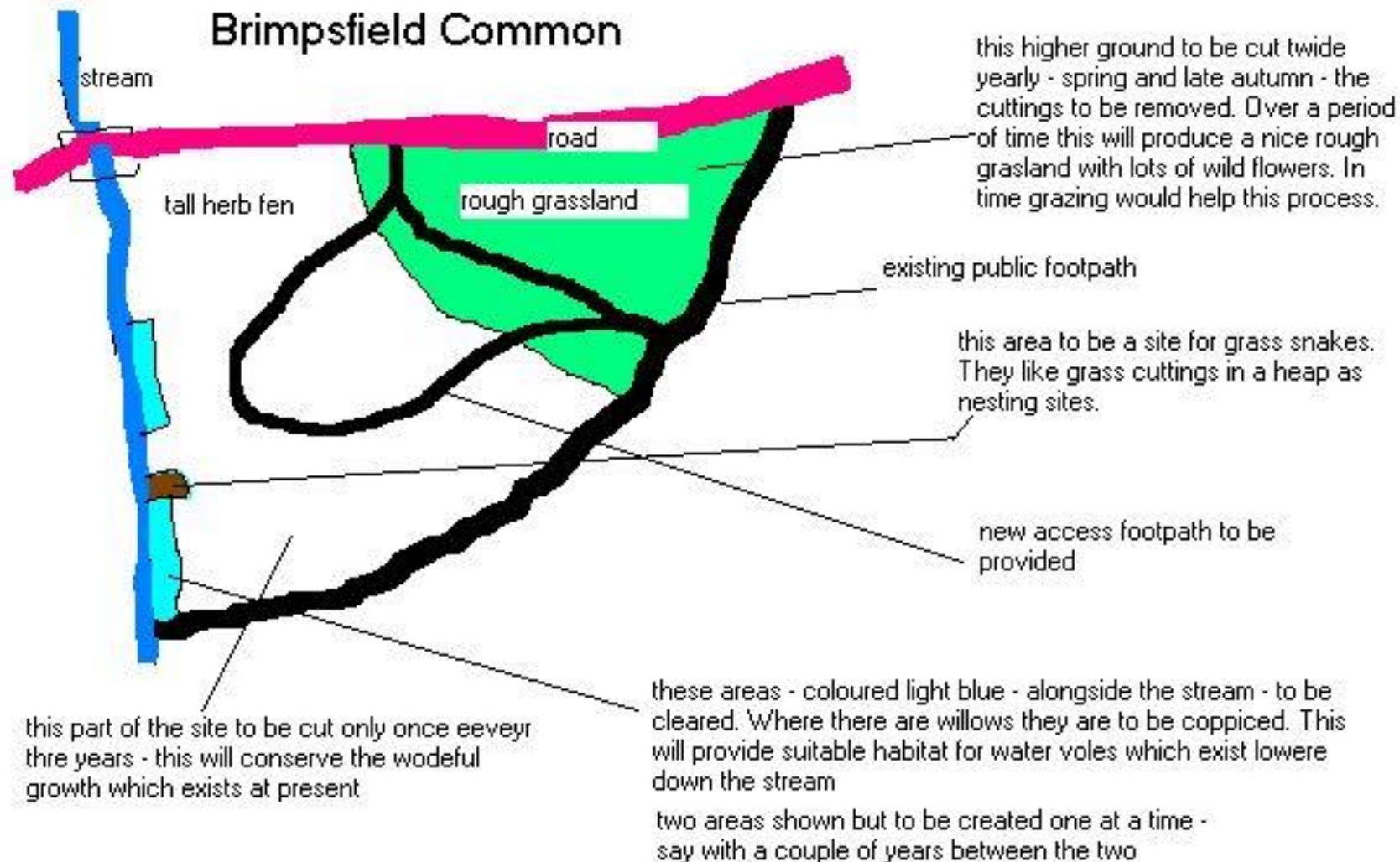
- ❖ Public access is protected under the Countryside and Rights of Way Act 2000
- ❖ Parking or regular vehicle use on common land is not permitted unless specifically licensed or a prescriptive right for such use has been established
- ❖ Occasional access (e.g. for deliveries, maintenance, occasional parking [*of not more than 4 hours duration at a time*]) is permitted only where no damage is done to the surface of the land, and/or it doesn't interfere with public access, and only where no other route can be used.
- ❖ There are prescriptive rights of access noted against the registered title of some parts of the common land.

# Land Maintenance Proposals

- Grass Cutting
  - Brimpsfield Common:
    - ❖ twice annually (spring and autumn) as ground conditions allow.
  - Caudle Green Common:
    - ❖ the main green in the centre of the village to be cut approximately 6-7 times a year, leaving it uncut for the full month of May to encourage wildflowers
    - ❖ the triangular area to the north of the village to be cut twice annually (spring and autumn) as ground conditions allow
- Ash dieback and tree health surveys every 3 years by a qualified tree specialist or in accordance with prevailing guidance.
- Prohibition of dumping garden waste or bonfires on common land.
- No physical works or structures (e.g. surface improvements, benches, hardstanding, fencing) may be installed without proper consent under Section 38 of the Commons Act 2006, nor without the prior written consent of the council.
- Maintenance responsibilities are currently met by the Parish Council through scheduled grounds maintenance and tree inspections.

# Environmental Management Proposals

- To encourage native species and habitat corridors where practical.
- To monitor and control invasive species (e.g., Himalayan balsam).
- To survey on trees on Council land and take action where necessary to ensure public safety, e.g. Ash dieback
- To continue the environmental strategy developed in 2010 for Brimpsfield Common, to be updated when resources allow.
- To support local nature partnerships where relevant.
- To liaise with [Cotswold District Council] to provide dog waste bins at appropriate locations throughout the parish.



T Overbury / M Colebrook November 2010

# Community Engagement - Proposals

- From time to time, to provide a Community Briefing Note to cover issues such as:
  - ❖ Maintenance proposals
  - ❖ regulatory changes
  - ❖ HM Land Registry status concerning the council's land and property.
- To consider supporting residents in the establishing “**Friends of**” Groups, e.g. for Caudle Green Common and/or Brimpsfield Common - to take an active part in delivering this policy and to provide feedback to the council on any concerns and issues arising
- To receive written representations from residents for proposed changes
- To apply for grants and other funding to facilitate any identified practical work

**Any Questions or Comments?**

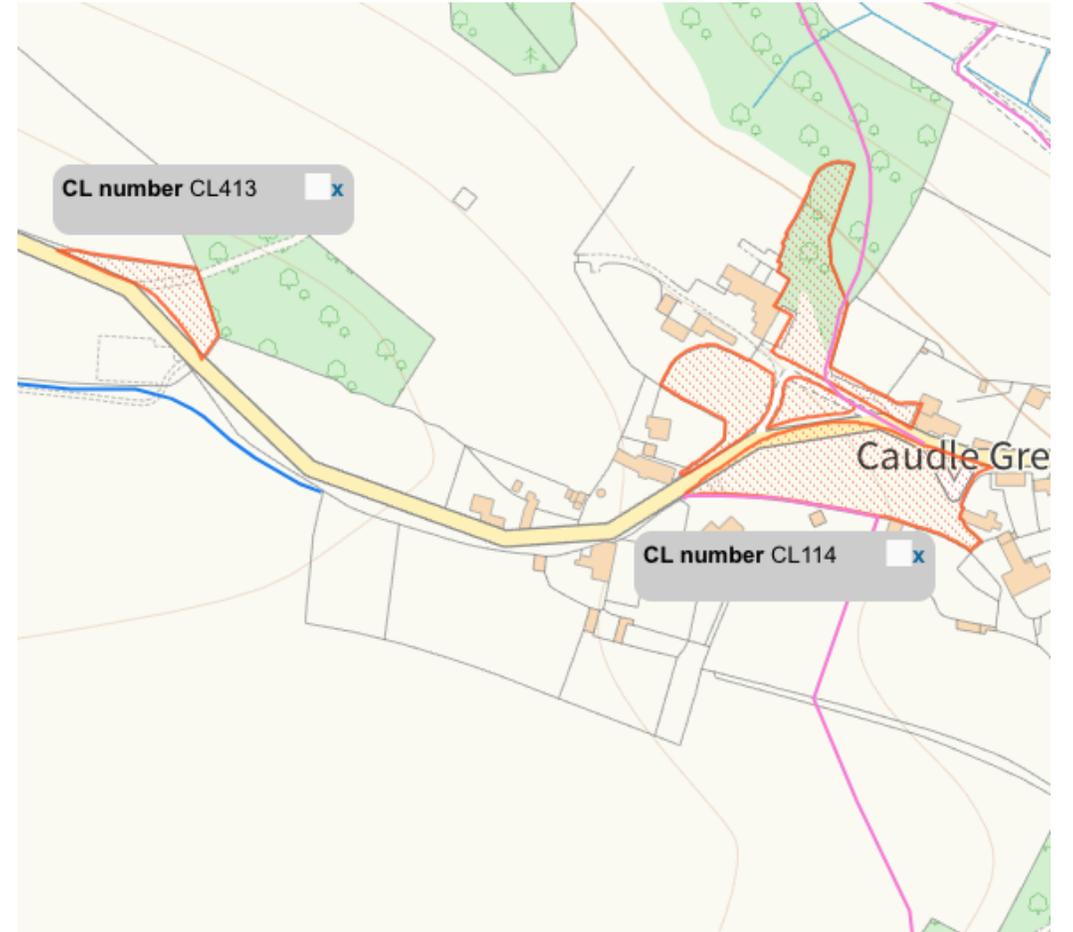
# Common Land Legal Framework

- Commons Act 2006, especially Section 38 (consent for works)
- Road Traffic Act 1988, Section 34 (unlawful parking)
- Countryside and Rights of Way Act 2000 (access)
- Planning Inspectorate guidance for works on common land
- DEFRA: Common Land – Guidance to Commons Registration Authorities and Applicants.

***Brimpsfield Common:***



***Caudle Green Commons (x2 top and main):***



# Common Land Ownership

*All 3 areas are registered as  
Common Land with  
Gloucestershire County Council*

*Caudle Green Common is  
registered with reference numbers  
CL114 and CL413*

*Brimpsfield Common is registered  
under reference number CL72*

*None of these areas of land are  
registered as Village Greens*

*The title to the land at Brimpsfield  
Common is currently unregistered  
and the Council is in process of  
registering this land with HM Land  
Registry.*

*The title to Caudle Green Common,  
is registered with Title Absolute at  
HM Land Registry under Title  
Number GR444199*

# Commoners Use

The right of a commoner to take resources from a piece of common land is called a right of common. A right of common can be:

- pasturage - the right to put livestock out to feed on the land, usually grass but can be heather or other vegetation
- pannage - the right to put pigs out to feed in wooded areas of the land
- estover - the right to take specific timber products from the land, like whole trees or firewood
- turbary - the right to take turf or peat from the land to burn as fuel
- piscary - the right to take fish from ponds, lakes, rivers and streams
- rights in the soil - the right to take soil or minerals from the common
- animals ferae naturae - the right to take wild animals

*In the case of Caudle Green and Brimpsfield Common there are no rights of common registered against any part of the land.*

# Public Use

The Countryside and Rights of Way Act 2000 (CROW Act) gives a public right of access to registered common land; this is on foot only.

They can:

- walk
- sightsee
- bird-watch
- climb
- run

*There's a general rule that visitors using their open access rights must keep dogs on a short lead of no more than 2 metres between 1 March and 31 July each year and at all times near livestock.*

The CROW Act has a list of general restrictions that limit what people using their open access rights may do, unless the Council gives permission for them to do something on the list, or the right to do something already exists. They cannot:

- ride a horse or bicycle
- drive a vehicle (except mobility scooters and powered wheelchairs)
- bring an animal, other than a dog
- camp
- play organised games
- hang-glide or paraglide
- use a metal detector
- run commercial activities on the land such as:
  - ❖ trade or sell
  - ❖ charge other visitors for things they do on your land
  - ❖ film, photograph or make maps
- remove, damage, or destroy any plant, shrub, tree or root with intent
- light, cause or risk a fire
- damage hedges, fences, walls, crops or anything else on the land
- leave gates open, that are not propped or fastened open
- leave litter
- disturb livestock, wildlife or habitats with intent
- post any notices
- commit any criminal offence

# Driving on Common Land

- Section 193(4) of the Law of Property Act 1925 makes it a criminal offence to drive a vehicle over a common, and
- Section 34 of the Road Traffic Act 1988 makes it a criminal offence to drive a motor vehicle over land that is not a road, that is a restricted byway, or over which a public footpath or bridleway runs.

*However, both offences are committed only if driving over the land is 'without lawful authority'. Since a right to drive over the land concerned could have been lawfully granted, it can be acquired by prescription.*

# Landowner's Responsibilities

Unless the landowner sets out to create a risk, or is reckless about whether a risk is created, it will not be liable for any injury caused by:

- any natural feature of the landscape including any tree, shrub, plant, river or stream
- any ditch or pond, whether natural or not
- people passing over, under or through a wall, fence or gate, except if they're making proper use of a gate or stile.

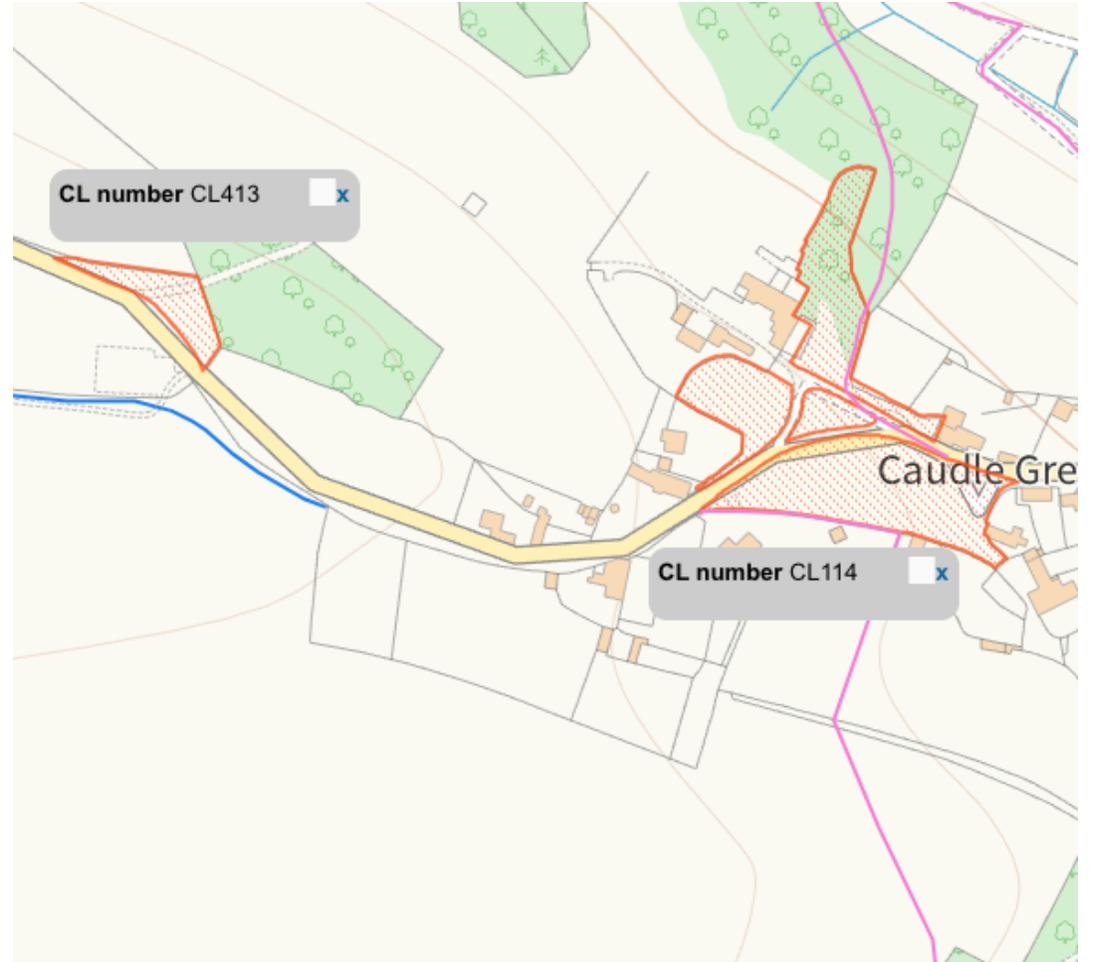
In general, all landowners (i.e. not restricted to common land) with a public right of way across it must:

- avoid putting obstructions on or across the route, such as permanent or temporary fences, walls, hedgerows, padlocked gates or barbed wire
- make sure vegetation does not encroach onto the route from the sides or above.

# Existing Rights relating to the Common Land?



# Public Footpaths, Bridleways, etc.



# Private Rights of Way across Common Land

- Can be acquired over common land by “prescription”. This can be established if the adjacent owner, or the previous owners, have driven across common land to access your property for over 20 years without permission, and without being challenged by the landowner.
- The right claimed must be one that could have been lawfully granted. For example, if the right could not have been lawfully granted by deed, such as a right to pollute a river contrary to a statutory prohibition, then it cannot be acquired by prescription

# Temporary Access across Common Land

- The Council, as landowner, may grant such consent on condition that the applicant notifies all adjacent property owners of the nature of the work intended and the duration
- The Council must take appropriate account of any reasonable concerns raised before granting such consent

# Responsibility for Repair and Maintenance of a Right of Way across Common Land

- Those who benefit from the right of way are responsible for its maintenance and upkeep in a consistent format to the established use
- The law provides that if a right of way needs “improvement” and/or other restricted work is proposed to the common land, then formal consent needs to be obtained under s38 of the Commons Act 2006. The consent involves consultation with the owners of the common, various other national bodies and is ultimately decided by the Planning Inspectorate
- However, such consent is not required if the proposed works would have not prevented or impeded access to or over the common (unless they are for the resurfacing of the common land). For example, works that are small and of such limited duration that they do not impede access.

# Parking on Common Land

There are no specific rights noted in current law, save for the Road Traffic Act 1988 s34(3) that allows a motor vehicle to be parked on common land with 15 yards of a road. No time frame or limit is given for this, but it is the Council's interpretation that such parking is in accordance with the public use of access to the common land as set out in the CROW act.

However, in practice the Council has permitted cars to park on various areas of the common land, and that permission is provided that the parking is temporary and does not damage the surface, nor restrict access to those who have rights over the common land or generally cause an obstruction.

On occasion, visitors and tradesmen do park in various places on the common land, when visiting or attending properties adjacent to the common. Again, in practice, the Council has given permission for people, machinery and equipment to pass over such parts of the common land as needed to do maintenance work on vegetation or attend livestock from time to time. The Council should consider whether there is adequate provision for such parking, and if it is appropriate to provide such parking, who should pay for that.

# Other Rights for the benefit of Property Owners adjacent to Common Land

From time to time there are practical uses such as putting rubbish bins out next to the roadway for collection. These are de facto permitted by the Council in a similar way to the parking noted above, i.e. without causing an obstruction or impediment to access.

**Any Questions or Comments?**