Evidence for Independent Review of Administrative Law Panel

[redacted]

Part I General Trends

1. Over the last 60 years I have noticed government becoming more autocratic. 30 or 40 years ago, my late father would write a letter to a local Council official pointing out some problem and suggest a practical solution, a damaged sign, a dangerous bend. The official would write back courteously and fix the matter. Now we get ignored, brushed aside, talked down too, over-ruled.

2. There is also a trend towards theory, everything in government is more theoretical, when in fact the British people are very practical - it is just that practice is excluded from government which makes the need for Judicial Review even more necessary.

Part II: Specific - Broxhead Common (NE Hampshire)

3. If someone enclosed 80 acres of Hyde Park, there would be uproar, and outrage. It would be against the Metropolitan Commons Act of the 1870s, and the fences would be pulled down. However, when 80 acres of Broxhead Common (our Hyde Park) were sneakily fenced by [redacted] and then sold to [redacted] in the 1960s, there was little to do but complain and register it under the 1965 Commons Act. This we did.

4. There were legal hearings. We worked on Sundays to raise money for the legal costs. We proved that there were two commoners on the 80 acres. But before the 17 commoners on the West side of the Common could be recognised there was another court case, and one of the two commoners was struck out. It then went to the Court of Appeal and my late father and Commoners Association had run out of money. So the Hampshire County Council (HCC) offered to help.

5. We accepted, but the HCC proceeded to change sides and do a deal with [redacted] (literally - they rent part of the Common from him as a Nature Reserve). The Court of Appeal dismissed this case subject to an agreement. Following that the remaining commoner, [redacted] sold his rights (which public donations had secured for him) to [redacted] for £10,000 - a lot of money in those days. This agreement required that the Secretary of State for Environment approve the illegal fences and the change of status of the Common. This did not happen.

6. Nothing much happened for a long time because we could not understand the Court of Appeal Document, because one page was missing. Eventually my colleague Maureen Comber started her research, finally found the missing page, and started her campaign to get this wrong redressed. See her submission "Evidence for the Judicial Review Panel".

7. The matter is very simple. Everyone agrees that [redacted] sold his rights to [redacted]. THEREFORE it was proven to be common land, because he could not sell his rights if they did not exist, nor would [redacted] pay good money for nothing. (Therefore Mrs Justice Thornton is wrong when she says it was only ever provisionally registered.) Now there are several consequences of this required by law:

7a. It was proven to be common land. Therefore the other 17 commoners on the West side of the Common should have rights on [redacted]'s part, since the Chief Commons Commissioner found that there is only one Common.
7b. The interests of the Public, such as access, rights of way, should be considered, before any change of status (away from Common) can be decided, because land which has been Common Land is different from Land which has never been Common. For example the rights of the Public are protected by the CROW 2000 Act, which is the rural equivalent of the Metropolitan Commons Act.
7c. The question of whether the illegal fences can remain or not, should be decided taking into account the rights of the other Commoners and the Public.
8 Most if not all these matters have to be decided by the Secretary of State (for the Environment) - that has never happened. When we applied for Judicial Review (JR) recently, is was rejected! The present system is too restrictive already.

Part III: Mismanagement of Public Access Lands by HCC
9. The problem is not just limited to Broxhead Common, because the HCC is guilty of mismanagement of public access lands and farm land in the Bordon (new town) area. There are several issues:
10.1a. There is a radar tracking station on Slab Common on the West side of Bordon. To compensate for this loss of land and other pieces removed, the MOD offered 12 acres of land at Pond Cottages in Oakhanger, which includes the old fish ponds of Selborne Priory, which would make a nice feature for the Public. The Treasury solicitor drew up a Deed which was signed by all the commoners (on Slab Common) and signed and sealed by the Secretary of for Defence - the land owner. The MOD sent this to the HCC who threw it out for the reason that it had not been authorised by the Secretary of State for the Environment. It stalled there for 28 years.

10.1b We finally found out why it was never registered in Winchester last year when the HCC sent us a copy - see the attached correspondence. They did not accept the authority of the Secretary of State for Defence! It is not even clear that this is legally correct, because the Army are exempt from parts of the 1925 Law of Property Act with regard to Commons.

10.1c Furthermore, if they had used the same logic with the [redacted] deal, they would have refused to accept that [redacted] had sold his rights until it was authorised by the Secretary of State for the Environment! In fact it is quite difficult to sell common rights because they are not owned outright, but are attached to the property ([redacted]) which [redacted] owned. So they may still exist!

10.2. In addition to these 12 acres being denied to the Public, there are two more bits of land on Broxhead Common totalling 6 acres which need sorting.

10.3. As part of the expansion of Bordon, the HCC want to build 360 houses on Standford Grange Farm and turn the other 100 to 120 acres into a Special Area of Natural Green Space (SANGS). Standford Grange Farm is part of the Eveley Estate which has been farmed since the 1200 AD or before - there is documentary evidence. *And it is still a <u>producing</u> farm*. But the HCC own it.

11. Let us stand back from this. On the one hand, there are 80 + 12 + 6 = 98 acres, which the public are being denied access too. On the other hand the HCC want to take 100 to 120 acres out of agricultural production so that they can profit from the building of houses on the rest of the farm.

Part IV: Conclusions
12. The present system of JR is too restrictive and expensive, especially for public interest matters. Good JR would stop long drawn out struggles, cut costs, improve local decision-making, and improve relationships with the community.