



FENCING AGAINST COMMON LAND

Dartmoor Commoners' Council has been asked to clarify the legal position regarding inadequate stock proof fencing surrounding land that abuts the common.

The Dartmoor Commons Act 1985 (Section 9) clearly states “for the avoidance of doubt, it is hereby declared that the custom on the commons is for the owner of any land –

- (a) which is to be treated for the purposes of this paragraph as not being part of the commons; and
- (b) which adjoins land which is part of the commons, being a part that is subject for the time being to rights of grazing registered under the Commons Registration Act 1965 (1965 Act);

to fence the land mentioned in paragraph (a) above, against any animals lawfully depastured on that part of the commons mentioned in paragraph (b) above; and for the purposes of paragraph (a) above land is to be treated as not being part of the commons if it is land which has not at any time been registered under the 1965 Act and is not land comprising a highway”.

Therefore, on Dartmoor, owners of land adjacent to a common have a legal obligation to maintain a fence on the boundary of their land, to prevent stock from straying on and off the common. Such a fence, wall or hedge should be reasonably secure and able to prevent the passage of animals that could normally be expected to be turned out on the common in question. This includes land located close to a common, even if not directly adjacent e.g., the owners of properties on a road leading to an unfenced common are expected to fence their boundary so as to prevent encroachment by stock straying along the road from the common. Additionally, if an individual owns the common as well as land adjoining it, there is still a duty to fence the common for the benefit of other graziers.

A copy of this Note and the Dartmoor Commons Act 1985 can be found on Council's website www.dartmoorcommonerscouncil.org.uk

Council's legal position is further supported by the following:

Spry v Mortimore (1946): where it was held that “the occupier of land so near the common that commonable animals may reasonably be expected to trespass upon it must fence the exposed part of their land adequately against them”. (*Gadsden, 2nd Edition, para 8-110*)

The Law of the Manor book: sets out the custom to fence against the common in the context of Manorial Law. (*Page 63*)

Egerton v Harding (1971): where Sprat's Cottage owned by Miss Egerton and Binswood Farm owned by Mr & Mrs Harding both adjoined Binswood Common at East Worldham, Hampshire. Cattle from the Farm strayed into the cottage garden and caused damage. Miss Egerton claimed damages and lost because the court found that there was a custom that she was obliged to erect a fence against the common to keep cattle out and had failed to comply with her duty. Such customs are very frequent and on Dartmoor have been confirmed by the Dartmoor Commons Act 1985 (Section 9) which declares 'for the avoidance of doubt' that the custom is to fence against the commons.