

## PART FOUR

*“A small and vociferous local lobbying group”*



After eight years of campaigning Save Penwith Moors has achieved a reasonable degree of success despite tough opposition from national and local agencies as well as from farmers and landowners

Save Penwith Moors – both individual supporters and the group as a whole – have, over the years, been subjected to accusations of committing criminal damage, as well as our correspondence to agencies being refused a response on the spurious grounds of being ‘obsessive’ and ‘unreasonable’. This is hardly surprising as the donors and recipients of generous financial handouts are unlikely to give up without a vigorous fight when their defective plans and actions are repeatedly challenged. Now that a new agri-environmental scheme is just around the corner – Countryside Stewardship –it is at present uncertain how, or even if, it will affect West Penwith.

## CHAPTER FOURTEEN

# *“Manifestly unreasonable”*

### 1. TOO MUCH FREEDOM OF INFORMATION

**O**UR FIRST FORAY INTO THE REALMS OF FREEDOM OF INFORMATION REQUESTS [FOI] TOOK place during August 2009 when a supporter applied to Natural England for HEATH Project documents. A total of almost forty FOI requests over the following six years were made to Defra, the European Commission, Interreg, English Heritage, Parliamentary Ombudsman, Heritage Lottery Fund, Communities and Local Government, but with far the most being sent to Natural England and Cornwall Council.

Requests covered a wide variety of topics: correspondence between various agencies and individuals concerning the HEATH Project and Environmental Stewardship Schemes; archaeology; public rights of way legal issues; audit reports; agency meetings; use of funding for unlawful infrastructure works; receipted invoices for HEATH works; compliance with the Aarhus Convention; Environmental Impact Assessments; West Penwith ESA payments; and Farm Environmental Records and Plans.

An initial FOI request in 2009 yielded a vast amount of information packed into four lever arch files – about 800 pages – that included many sheets of sensitive personal information that should never have been disclosed, but also many pages of data that proved very useful to our campaign even though it was mostly a few years out-of-date. When we discovered the large amount of confidential data we decided to act responsibly and report this to the authorities.

Initial communication with the NE office in Truro failed to get any response so, at the Heathlands Forum of 3rd March 2010, Peter Bowden of Natural England was handed a sheet of Frequently Asked Unanswered Questions, one of which was: “Why were private bank details supplied by NE under Freedom of Information, and other documents supplied under FOI were not the finished articles but only drafts?” And again he was told in a letter from SPM a few days later of the inclusion of private details on previous Freedom of Information documents (bank account numbers etc) but no acknowledgement or action was taken until his superiors – and the Minister at Defra (Huw Irranca-Davies MP) – were contacted on 22nd March. Natural England immediately instituted “urgent attention”. At this time SPM sent emails to a large number of individuals and relevant organisations:

“OPEN AND TRANSPARENT” - Natural England disclosure of staff private details. To be open and transparent is one of Natural England’s claims and in this case they have excelled themselves. A batch of HEATH Project documents delivered last year to a member of the public under Freedom of Information – some of which was passed on to Save Penwith Moors – contained numerous instances where private bank details of staff were disclosed as well as car numbers, salaries, home addresses etc. Although personal details had been ‘black-

ed out', on some documents this was done in such a sloppy manner that the text was easy to read. Here are a few examples with some details [not reprinted here]: travel and subsistence forms; bank account numbers; full private address; car registration numbers; HSBC purchasing card statements; credit card numbers; Project personal salary costs."

On 26th March 2010 SPM received a letter from the Natural England Executive Director, Corporate Services:

"...I am grateful to you for alerting Natural England to this matter, which is now receiving my urgent attention as the Executive Director responsible for Information Assurance ... In order to mitigate any effects we have contacted all of the people potentially affected to apologise, explain the circumstances and advise on actions to take. Those directly affected have confirmed that they are content with the actions taken on discovery of the accidental release, as well as being satisfied with the measures we have agreed to take to prevent this happening in future. We have also reported this disclosure of personal information to Defra. We are also acting urgently to put measures in place to reduce the risk of a reoccurrence. We have:

- Launched an all staff communication reminding people of existing processes and guidance, specifically covering the release of personal information;
- Initiated a review which may result in revisions to our existing processes and guidance. This may include, where necessary, tightening up final approval procedures for information releases and implementing additional short training courses for staff;
- Brought forward the refresh of procedures on the redaction of sensitive information.
- In the meantime, and whilst making no suggestion that you would be likely to do so, I would be grateful if you could confirm that you will not use this personal information in any way or pass it on to any other parties.

SPM replied the same day confirming this request. At the end of March a letter was received from Huw Irranca-Davies MP: "I am grateful to you for drawing the matter to my attention." The same day SPM emailed the Minister "... I must draw your attention, again, to the apparent endemic failures of Natural England management in their planning and execution of both the recently finished HEATH Project and ongoing HLS in West Cornwall, of which the disclosure of private information is merely a minor symptom."

On the 25th April the same minister informed SPM that he "very much" appreciated our co-operation and responsible approach on this issue and, on the following day, SPM sent an email to the Dutch Data Protection Authority copied to the Commission Nationale de l'Informatique et des Libertés, Paris, and to the UK Information Commissioner:

"A quantity of sensitive personal data, including private addresses, salaries and bank details, has been received amongst a parcel of documents pertaining to the HEATH Project under a Freedom of Information request to Natural England. As well as former employees of English Nature some of these documents refer to HEATH Project partners in France and the Netherlands<sup>A</sup> ... As you may not be aware of these disclosures, I am writing to alert you to

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<sup>A</sup> Parc Naturel Regional d'Armorique, Syndicate Mixte Espaces Littoraux de la Manche, Conservatoire Du Littoral, Bretagne Vivante, Alterra and Hoge Veluwe

this situation caused by, what appears to be, systemic incompetence by Natural England's staff that has involved other personnel in Continental organisations named above who I have already contacted.”

In early May a four-day inquiry was conducted by the NE Delivery Manager, Customer Service and Improvement Team, centred around Exeter, Truro and Penzance. In its conclusion mention was made of a number of failings in the process that led to the release of personal data, and that despite the extra time available, this job did not appear to have been given the attention it merited. In his final remark the person conducting the investigation wrote: “However, in my opinion, Natural England could have done more to ensure that sensitive personal information was not released.” Natural England has, since finding out about this disclosure,

- Undertaken an initial review to establish the facts;
- Directly responded to Person 2 (Ian Cooke)
- Contacted those directly affected to apologise, explain the circumstances and advise on actions to take;
- Launched an all staff communication reminding people of existing processes and guidance, specifically covering the release of personal information;
- Brought forward the “refresh of procedures” on the redaction of sensitive information;
- Agreed that an internal investigation should be undertaken; and undertaken an assessment of the requirement to notify external bodies i.e. the Information Commissioner's Office.<sup>1</sup>

A very amicable and informative meeting took place at Men-an-Tol Studio on Thursday 13th May 2010 between the author of this inquiry and myself and, a few weeks after the report was completed, the new minister at Defra, Richard Benyon MP, wrote to SPM during June: “I very much appreciate the responsible approach that you have taken regarding the disclosure of this information and trust that I can continue to rely on you not to disclose any personal details that may cause harm or distress to individuals.”

## 2. “OBSESSIVE”

HOWEVER, DESPITE THESE APPRECIATIVE MINISTERIAL WORDS, IN A LETTER DATED 3RD MARCH 2010 the NE office in Truro, who had earlier assessed our previous FOI request asking for five receipted invoices for questionable HEATH Project works, described this request as being “manifestly unreasonable” and “obsessive”, since it was part of numerous other communications the cumulative effect of which amounts to “harassment of staff” – hence they would not be releasing the information requested. A formal complaint was then made to NE and, on 7th April, NE declared our appeal unsuccessful and we then progressed the issue to the Information Commissioner's Office [ICO]. The ICO made their decision in a 25 page report on 10th January 2011 and found in favour of Natural England. Nonetheless it was not a total waste of time and effort on our part since the ICO also made the comments that:

- “the information provided [by SPM] does not suggest that the current request is obsessive”;
- that our request did have a serious purpose and that provision of the invoices would provide greater accountability;

- and that the Commissioner wished to note that, while it may be appropriate to take into account previous conduct ... the public authority must still treat every new request on its own merits and, when doing so, “it is essential that it does not treat the requester (or the Group), rather than the request, as being vexatious or manifestly unreasonable.”<sup>2</sup>

Regardless of Natural England’s stubborn refusal to produce the five receipted invoices we still managed to obtain them after an FOI request to the Heritage Lottery Fund in August the same year.

It is significant that at virtually the same time ministers and senior Natural England officials were expressing their gratitude to SPM for our responsible approach, some local officials in Truro were stigmatising us as being obsessive, harassing staff and acting in an unreasonable manner. These problems revolved around the large amount of correspondence and requests we made to NE when, according to them, many had previously been answered: the actual situation was that many of NE’s responses were vague and needed clarification, or else prompted further query.

### 3. ABUSE AND INNUENDO

OVER THE YEARS – BOTH AS A GROUP AND AS INDIVIDUALS – SAVE PENWITH MOORS HAS BEEN subjected, verbally and in print, to direct and indirect abuse and accusations of being responsible for criminal damage, as well as misinformation being given to the public as to our campaign intentions.

An objector to one of our common land applications, who lives close to Carnyorth Common, unambiguously accused SPM – in writing – of perpetrating criminal damage in other parts of the Penwith moors. Several web sites and publications have had a go at us. An article in the *Meat Trade News Daily* ‘Whitebred Shorthorns to Graze Penwith Moors’, published on 6th March 2010, described us as “an ill-informed cow-fearing protest group”.<sup>3</sup> Another site elaborated this statement by adding the emotive statement that we were “trying to whip up opposition in the local community against grazing the moors”.<sup>4</sup> The summer 2010 newsletter of the Cornwall and Isles of Scilly Federation of Biological Recorders called us “a small and vociferous local lobbying group”, and that objectors [to stock-proofing and grazing] should be informed and educated “so that all sides can reach a happy compromise.”<sup>5</sup>

In August 2011 SPM wrote to English Heritage and the Chief Executive Officer of Cornwall Council with regard to an alleged libel contained in a publication jointly published by Cornwall Council and English Heritage.<sup>6</sup> Two consecutive sentences of a paragraph formed a correlation between SPM and acts of criminal damage. It is our firm belief that this association was deliberate and designed to discredit law-abiding individuals and, in a letter to the English Heritage Legal Advisor, we pointed out that the offending sentences only needed a very slight change of syntax to place SPM in an accurate light – for example: “Proposals for introducing grazing to some areas of moorland in West Penwith resulted in the formation of a ‘Save Penwith Moors’ group which actively campaigned [should have added: *within the law*] against grazing. Coincidental with the protests there were several instances of damage to fencing on rough ground both newly installed and long-established.”<sup>7</sup>

I also had two occasions of personal threats and abuse at my home. As well as the event of September 2012 already described, I had previously been aggressively challenged by a local farmer and rural contractor who knocked on my door at 8am on a Monday morning loudly complaining, amongst other things, that SPM was creating discord within the local community. In other words, he expected local residents to accept without complaint the HEATH Project cattle grids, gates and barbed wire strung out across previously unobstructed moorland. This individual was not then directly connected with any of 'our' four areas although he did, apparently, benefit financially from work done for the HEATH Project. Other SPM supporters were also verbally abused by members of the 'opposition' on various occasions.

Notwithstanding these unpleasant events we refused to be intimidated – indeed it made us all the more determined to carry on with our campaign.

#### 4. “NOTHING I CAN USEFULLY ADD”

THE MAIN OBSTACLE TO REACHING SOME SORT OF RESOLUTION TO THE FENCING AND GRAZING issue has been the refusal, at various times increasing as our campaign progressed over the years, of Natural England, Defra and English Heritage to communicate with SPM: “Nothing to add”; “we will not answer further correspondence”; “nothing I can usefully add”, etc. It was maintained that many of our questions had already been answered and that we were being “obsessive” and verbally attacking and harassing NE staff. It was also stated: “there is no requirement for any future consultations on their [agri-environment schemes] overall application in England”. Maybe not, but it would have helped diffuse the situation and been ‘best practice’ if they had consulted in line with their own HEATH Project Communication Plan and declaration of being as open and transparent as possible. The truth of the matter is that the high volume of correspondence between SPM and NE was due to a number of causes:

- NE did not acknowledge receipt of communications thus, after a reasonable passage of time, reminder or repeat messages had to be sent (Heritage Lottery Fund always sent an acknowledgement and a time within which a response will be made. NE did not.) This now seems to have changed with NE acknowledging receipt and responding in 10 days. Lessons learnt?
- The cause of information requests was NE's alleged maladministration; thus SPM were attending to issues generated by NE. With that in mind it is quite incorrect to claim SPM's correspondence was vexatious or stressful.
- The avoidance of direct answers generated repeat requests for the original information.
- The answering of FAQ's via a dedicated NE website<sup>8</sup> without informing the Forum or SPM of this action did not represent anything but deceit. The site proclaimed: “the project [HEATH] has received a number of enquiries over the past four years covering a wide range of our activities: access, archaeology, biodiversity and nature, grazing and livestock, funding and others. This document is a compilation of all our responses to key questions and should answer most general queries”. This represented a barrier to resolution and a waste of effort on our part in that requests for information would have been unnecessary had we been informed of the website, apparently set up in December 2009.

- NE relate most of the queries about HEATH to SPM but need to be far more selective. We are confident that, with such wide publicity and impact after the forming of SPM in July 2008, communication came from other concerned members of the public. Indeed, *The Cornishman* (25/09/2008) reported that “Natural England said it has been swamped with letters from residents expressing concern about fencing and grazing of the moors” – this was even **before** any local fencing had been installed on ‘our areas’.

This negative attitude has been a major problem since the HEATH Project began even though, in 2000, a programme had been set up called *Dialogue Matters*, to help people have better discussions and make better decisions about the natural environment, with a core ethic of respect for stakeholders which, they stressed, should underpin all actions and decisions. Clients included Defra, English Nature/Natural England, The Wildlife Trusts and the National Trust.<sup>9</sup> Under ‘Promoting good practice’ they state: “Designing and facilitating stakeholder dialogue is an emerging profession and we are committed to developing and delivering the principles of good practice ... As part of promoting good practice we have provided advice to Natural England”.<sup>10</sup>

Save Penwith Moors suspects that Natural England’s denial of straightforward communication, and Freedom of Information requests, was directly related to SPM discovering serious systemic flaws within the HEATH Project and Higher Level Stewardship agreements. And that the illegalities; financial laxity; disregard of local opinion; representation of myth and anecdote as fact; a total lack of accountability and the exposure of employees’ private details to public scrutiny, have all been symptomatic of Natural England’s presence in West Penwith. Natural England, in denying us access to information, place a greater emphasis on self-preservation than a duty of care to stakeholders expected by the wider public.

The publication in March 2010 of a report commissioned by Natural England – *Finding Common Ground* – had the objective of identifying “mechanisms to recognise and take account of local community interests on commons”.<sup>11</sup> This report, although confined to Registered Commons, has many salient points that should have been put into practice by Natural England when planning the HEATH Project. Points made include:

- “It is important that you do not start with preconceived ideas. If people think you are just trying to win them round to your point of view they are likely to resist.”
- “[When] under pressure to get things done and to meet funding deadlines, there is a danger that the community’s interests will be overlooked.”
- “Plans for grazing, for scrub-clearance and tree-felling, for instance, can all meet opposition unless the community is involved in their making.”
- “People value the open, untrammelled, informal and free nature of commons. Fencing is one of the most controversial issues ... They are the first stage in divorcing the commons from their communities [and] are a physical barrier, preventing people from wandering at will, contrary to their customs and now rights. They are a psychological barrier, constraining people’s feelings and losing the sense of openness. They impinge on the landscape ... We therefore recommend that fencing should be viewed as a last resort.”

It is my belief that the lack of any meaningful early communication with moorland stakeholders also derives from a strong suspicion, by the agencies involved, that there would be forceful opposition to any attempt to erect fencing, gates and cattle grids on public areas. Indeed, such a possibility had already been voiced publicly in 2005 three years before the end of the HEATH Project. In the English Nature publication *Grazing management of lowland heathlands* it states under ‘public opinion’ that: “It is vitally important that you bring local communities along with you and that you keep them informed of developments ... Any change of management can potentially create opposition within a local community, particularly where it involves the fencing of common land ...”<sup>12</sup>

I have shown that grazing is not a mandatory requirement for Higher Level Stewardship agreements and that there are a number of instances locally where grazing – although intended and stock-proofing planned for – has not taken place. So, after all, in spite of what Natural England has always told us, it is possible for a local HLS agreement not to include grazing with all the intrusive and expensive stock-proofing required. But what of the future now that HLS applications have ended?

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<sup>1</sup> *Investigation into the release of personal data*, NE Delivery Manager, Customer Service and Improvement Team. For full report go to [https://ico.org.uk/media/action-weve-taken/decision-notice/2011/578718/fer\\_0308249.pdf](https://ico.org.uk/media/action-weve-taken/decision-notice/2011/578718/fer_0308249.pdf)

<sup>2</sup> Information Commissioners Office, Environmental Information Regulations 2004, Decision Notice 10th January 2011 Ref: FER0308249

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[http://www.meatradenewsdaily.co.uk/news/020310/uk\\_\\_\\_whitebred\\_shorthorns\\_to\\_graze\\_penwith\\_moors.aspx](http://www.meatradenewsdaily.co.uk/news/020310/uk___whitebred_shorthorns_to_graze_penwith_moors.aspx) this link no longer active

<sup>4</sup> Stackyard News [http://www.stackyard.com/news/2010/02/environment/07\\_penwith\\_moors.html](http://www.stackyard.com/news/2010/02/environment/07_penwith_moors.html) BUT NOTE: these offending words were later deleted

<sup>5</sup> See the full article at <http://www.cisfbr.org.uk/Documents/CISFBR%20Newsletter%20Summer%202010.pdf> go to page 2 left hand column.

<sup>6</sup> *Managing the Historic Environment on West Cornwall’s Rough Ground* by Graeme Kirkham (page 92)

<sup>7</sup> Letter dated 21st September 2011 to the English Heritage Legal Advisor

<sup>8</sup> *Frequently Asked Questions regarding the HEATH project and heathland management* [http://www.theheathproject.org.uk/content\\_pdf/en/FAQs.pdf](http://www.theheathproject.org.uk/content_pdf/en/FAQs.pdf)

<sup>9</sup> Dialogue Matters <http://www.dialoguematters.co.uk/index.asp>

<sup>10</sup> [http://www.dialoguematters.co.uk/about.asp?p=good\\_practice](http://www.dialoguematters.co.uk/about.asp?p=good_practice)

<sup>11</sup> Finding common ground Integrating local and national interests on commons: guidance for assessing the community value of common land. March 2010 with minor revisions January 2013 <http://www.oss.org.uk/finding-common-ground/>

<sup>12</sup> See English Nature web site published an article *Grazing management of lowland heathlands* at [http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=10&ved=0CF0QFjAJ&url=http%3A%2F%2Fpublications.naturalengland.org.uk%2Ffile%2F115020&ei=i\\_8RU9ucB46thQeT7IGoDw&usq=AFQjCNHIKmRsI5CkXhSbEVfaFrRQAL99Ag](http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=10&ved=0CF0QFjAJ&url=http%3A%2F%2Fpublications.naturalengland.org.uk%2Ffile%2F115020&ei=i_8RU9ucB46thQeT7IGoDw&usq=AFQjCNHIKmRsI5CkXhSbEVfaFrRQAL99Ag) (pages 9-10)