

An Everyday Tale of Common Folk

*Common 'tis named
And calls itself, because the bracken and gorse
Still hold the hedge where plough and scythe have chased them
Up in the Wind by Edward Thomas¹*

In 1866 Lord Brownlow, the young and fabulously wealthy owner of the Ashridge Estate, erected iron fences to enclose (privatise) about 400 acres of Berkhamsted Common. Resistance was led by the Commons Preservation Society (CPS) which had been formed the previous year. The fences were taken down in a celebrated moonlight raid and, after a lengthy legal battle, stayed down.² The episode, known as “The Battle of Berkhamsted Common”, was nationally, not just locally important. It is a foundational story of both the Open Spaces Society (the successor to the CPS) and the National Trust - who first operated out of the CPS offices.³ I’ve been studying witness evidence from the trial, which gives voice to people not often heard in the historical record - those whose working lives were spent on the common.⁴

Space precludes much contextual background but it is worth bearing in mind when reading the evidence, that commons were and are private land (Lord Brownlow owned Berkhamsted Common: today it is part owned by the National Trust and Berkhamsted Golf Club), to which other people have certain rights, e.g. the right to graze animals or to collect fuel.

¹ Thomas, R.S. (Ed.) *Selected Poems of Edward Thomas* (1964)

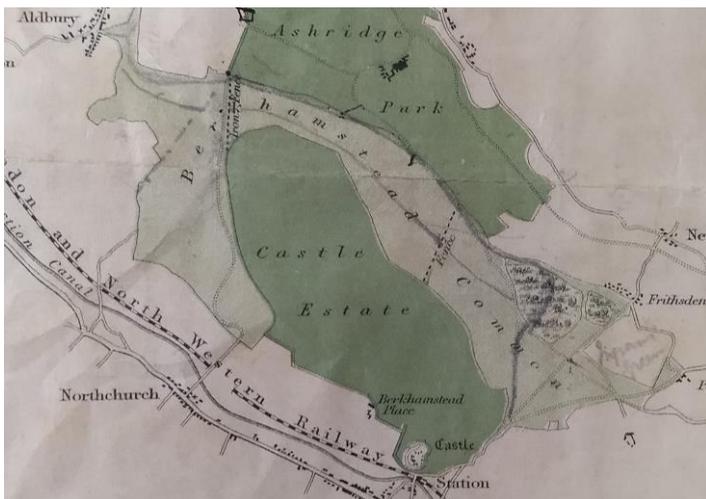
² The events of the tearing down of the fences are well documented in Whybrow, G., *History of Berkhamsted Common* (1934)

³ Open Spaces Society <https://www.oss.org.uk/>

⁴ HALS, *Court papers*, ref: DE/Ls/B178 (1866-1876). Other documents at the archive nearly all filed between DE/Ls/164 and DE/Ls/178 include *Papers concerning Berkhamsted Common and litigation over rights between The Bridgewater Estate and tenants*.

HALS, Grey’s Estate plan of Ashridge, ref: AH2770 (1762)

The Battle of Berkhamsted Common was part of a long war. The first seventeenth century riot was not successful in halting the enclosure of the central portion which later became Coldharbour Farm and left the remainder of the common with its distinctive horseshoe shape. The second riot was more successful: pulled down fences stayed down. That is, until Lord Brownlow decided that he would put up his own fences on more or less the same footprint in 1866. The CPS immediately sought a judicial ruling to protect the rights of all the commoners with the help of Augustus Smith of Ashlyns Hall.⁵



Detail from Augustus Smith’s map showing iron fences, 1866⁶

The moonlight raid is justly famous and has featured in many articles, including in the *Chronicle*.⁷ Claim and counter-claim between Lord Brownlow (and his estate after his death) and Augustus Smith meant that the real Battle of Berkhamsted Common raged not across the gorse and bracken of the Chiltern hills, but through the courts.

⁵ Cowell, B., ‘The Commons Preservation Society and the Campaign for Berkhamsted Common, 1866–70’, *Rural History*, Vol 13(2), (Oct 2002)

⁶ HALS, *Augustus Smith map*, ref: DE/Ls/B177 (1866)

⁷ Sherwood, J., ‘Lady Marian Alford (1817-1888), *Chronicle*, v.XV (2018)

The two trials would hear viva voce evidence from 48 witnesses via sworn affidavits, and in some cases, cross-examination, which came from interviews conducted in the King's Arms in Berkhamsted. The witnesses' average age was over sixty, some of them were much older: two of them, James Dorrofield and George Tarbox, gave evidence to the trial in 1866, but died before it was concluded in 1870. The evidence, which runs to some 25,000 words, paints a fascinating picture of the common in the first half of the nineteenth century.

Two key points arise from this evidence: Team Brownlow was hampered by the fact that their witnesses wore two hats. Even the most loyal estate worker, with sometimes decades of service, was also a commoner. They might pick gorse to fuel Lord Bridgewater's brick kilns six days a week, but on the seventh they would gather it for their own hearth. If work was slack, they might gather some for their neighbours as well, perhaps to sell to the baker or brewer. Whilst they criss-crossed the common every day on estate business, they were used to doing the same on their own business. An overloaded cart might very occasionally be turned back, especially since the only hard road had been taken out of service, but mostly people went where they liked: had done since time immemorial.

Another key point was the sheer scale of use of the common. Almost all the local farmers and small holders, and some enterprising people who had no land at all, turned sheep on to the common for a good part of each year. It became apparent that contemporary depictions of the common as "marginal" land awaiting "improvement" were as much ideological as factual. If a sensible part of your income was from sheep, then the common was central to your local economy, not a missed opportunity to grow corn.

Chiltern brick making has been characterised as small scale and seasonal. But this evidence showed that for a few years at the height of demand, during the building of Ashridge House (1808-c1821) twenty people were employed full time cutting furze on the common and on Coldharbour Farm, to provide fuel for the brick kilns.

With help from the Chiltern lidar survey, we can fit Brick Kiln Cottage back into its nineteenth century landscape, surrounded by small pits, not

always obvious at ground level in today's woodland.⁸ Lidar evidence cannot tell you the purpose of a pit. The beauty of the trial evidence is that it can tell you not just what it was for, but who dug it. A dell hole in the garden of Woodyard Cottage on the northern edge of the common was once a pond. Before that, it had been a gravel pit. Samuel Garrett, who was 77 at the time of the trial, worked on the conversion. He remembered helping to slope the sides around about 1831. He dug the clay on the left-hand side of the road to Coldharbour and puddled the pond himself.

All the witness testimony is fascinating. Although one feels the controlling hand of the questions (which are not usually recorded), the answers come across as spontaneous. Perhaps a pint of something had set tongues wagging, and minds wandering freely back over long working lives.

The testimony is set out in three sections: the first is mostly about sheep, the second, bricks and lastly, roads. All of the sections are linked by the common's signature plant, gorse, known as furze to our nineteenth century ancestors. In some places - even today the geological maps are not complete - there are layers of sand and flint gravel between the surface and the chalk bedrock. The lower layer of gravel is, or was, a beach. Gorse thrives on the acid soil above the buried sand and gravel. It is particularly adept at maximizing the benefits of limited calcium and other nutrients, so much so that it can grow quite happily in builders' rubble.⁹ Gorse heathland characterised much of the common in the nineteenth century, before it stopped being grazed in the twentieth and a secondary woodland grew up characterized by silver birch.

⁸ Like aerial photography, lidar, which works on the principle of radar, but uses laser radiation instead of microwaves, can detect "lumps and bumps" in the landscape that are not always visible at ground level. It has an advantage over old tech: it can "see through" trees, making it extremely useful to study wooded landscapes, like Berkhamsted Common. The whole of the Chilterns area has been surveyed and is available to study online at Beacons of the Past LiDAR Portal: <https://chilternsbeacons.org/wp/>

⁹ Howkins, C., *Gorse, Broom and Heathlands*, (2007). Chris Howkins is an ethnobotanist. My knowledge of gorse, particularly its relationship to sheep farming on common land, comes from his book.

Sheep

Benjamin Gravestock, 57, who started his working life at Coldharbour Farm when he was nine years old, remembered, “I believe all the farmers, or nearly all in the parish used to turn sheep on the common”. Thomas Foskett, 60, a shepherd at Little Heath had seen various farmers come and go at the farm during his working life. They used to turn between 300 and 500 sheep on the common at “the latter end of April or beginning of May, and used to keep them on sometimes as late as Christmas.” He remembered that Augustus Smith’s father had also turned sheep on the common - but not Smith himself.

At the other end of the scale, William Saunders, 74 (or 75, he was not sure), who ran the Anchor public house in Northchurch, had, until his brother’s death, turned a small flock of sheep on to the common.¹⁰ They owned about 50 between them. His brother was a shepherd by profession and was able to look after their own stock whilst looking after his employer’s. Even before William had made enough money to rent a couple of meadows, they had kept their small flock on the common, often folding them at night on nearby farmland. In fact, the farmers would often pay them: sheep dung was highly prized.

John Burnham, 55, lived on the common and remembered that Mr Bovingdon of Kings Hill Farm, had 100 sheep on the common. They sometimes “remained on the common all night”, he adds, perhaps disapprovingly. Thomas Waterton, 61, a “rough carpenter”, was born in a cottage whose garden gate opened on to the common and had worked on the common from age six, mostly as a furze cutter. He also found time to keep 70 sheep. On a smaller scale still, Charles Garrett, 54, who had been employed stone-breaking and leaf-raking on the estate before going to Coldharbour Farm to look after poultry, turned his own diminutive flock of eight sheep on the common. Other animals mentioned by the witnesses are a few horses, ponies and donkeys and one justly famous cow belonging to Mr Hawley of Whitehill.

¹⁰ William Saunders’ description of his journey from sheep to shop, alongside evidence from the other sheep owners at the trial would also have been instantly familiar to Kalm, who had observed similar practices in 1748.

There was also passing traffic. Frederick Waterton, 44, the landlord of the Plough at Potten End had been employed “in the countess’s time” catching hares and rabbits on the common. “I have seen droves of sheep, horses and cow kind being driven along the Broad Drive towards Potten End - the droves of horses would be about Barnet Fair times.”

With so many people invested in the common, it is probably not surprising that tensions sometimes arose between the estate and other users. John Tompkins, 50, “had orders not to let Northchurch sheep go on Berkhamsted Common. Aldbury had to keep their sheep on their common. I have frequently told the Northchurch and Aldbury shepherds to take their sheep off and they always drove them off.” Things came to a head in May 1835, when the common was driven at the behest of the estate; all the grazing animals were rounded up and put into a field at Coldharbour Farm, to be claimed by their owners. It was thought that people with no land in the parish, were turning their sheep on the common and it was in danger of becoming overstocked.

Joseph Swaby, 57, a woodman, remembered the event very well - and provides historians with a useful directory of local sheep owners into the bargain:

I know every part of Berkhamsted common well. The first summer I lived at the Old Dairy the common was drove up to a meadow on Cold Harbour Farm. I was present and had orders from Mr Spicer, the head keeper, to assist in driving the cattle into the meadow. All animals we found grazing on the common whether horses sheep or cows were driven into the meadow. I think this was in the month of May. Afterwards several of the owners came into the meadow and claimed their sheep. I recollect that Benjamin Cook of Potten End, [?] Costin, G Watson, Francis Thorn, Isaac Saunders, John Bedford, John Cook, Daniel Bedford, Mr. Sutton of Rossway, and several others came there and claimed their sheep. The sheep were afterwards allowed to go on the common, but orders were given afterwards to report the names of all those persons who turned sheep on the common who held no land and they were reported accordingly, and afterwards they ceased turning on.

The total number of sheep rounded up on the 25th May 1835 was over 5,000, of which a third were deemed to be owned by people “having none or very little land in the parish”. William Saunders’ sheep, absent from the common at the time of the roundup, were now confined to his own land in Northchurch, along with those of his brother. Charles Garrett of Little Gaddesden had to get rid of his small flock but was grateful that “they did not charge me anything - but actions were brought against Thorn and several others and they had to pay - I have heard some £30 and others more”.

Benjamin Gravestock recalled that: “Before the common was drove they used to turn on what number they liked, but afterwards they used to turn on by stint: but I do not know what the stint was”.

John Blacknell, 78, had lived at Potten End Farm since 1812 and had been a shepherd on the common for three or four years. He remembered that it had been a bit of a free for all before the drive and that even after the drive there were repeated incursions from farms in Hemel Hempstead. He pointed a finger at Warners End and Boxstead Farms specifically. He told the court that Norcott Hill Farm in Northchurch parish was still turning sheep on to Berkhamsted common and pointed out that the farm was owned by the estate, which was blithely pursuing people through the courts for breaking rules which it was not applying to itself. Given this rather unlevel playing field it is perhaps understandable that several witnesses remembered the drive being a somewhat bad-tempered affair. The estate, worried about trouble, had enlisted backup.

Henry Newell, 62, had worked as a brick maker with his father before assisting in the great drive and remembered:

... a man named James Meager, and another man named Shadrach Bedford [a furze-cutter from Frithsden] had sheep on the common, neither of whom had any land in the parish, and while the sheep was being driven they sent their dogs forward to drive them back. Lady Bridgewater had two Bow Street officers there. They were on horseback and I recollect one of them told them that if they didn't keep their dogs back, he would shoot them. The officer had a pistol in his hand - I saw it.

Thomas Smith, 70, remembered a similarly tetchy confrontation:

I recollect Costin coming after his sheep at night with his father. He swore at the officer and was very saucy to him, and the officer at last pulled out his staff and told him he would knock him down if he didn't hold his tongue. He allowed Costin to have them. Mr Newman counted them out for him.

Five thousand sheep may be an underestimate. George Whybrow suggests that news that the common would be driven was leaked in advance and some sheep may have been removed in anticipation.¹¹

Furze provided grazing for sheep, who eat the young shoots. This was particularly important in early summer when farmers wanted their own meadows in the more fertile valley to make hay. The common was a vital part of a system which maximised the use of local resources and allowed all the local farmers to raise more livestock than their own land could support in isolation.



Broad Green Drive, 2019

But furze was not just a vegetable. It was a kind of super-plant with several uses to our nineteenth century ancestors. Its chief one being fuel. On the common this meant that furze was intimately bound up with the manufacture of bricks.

¹¹ Whybrow, *Berkhamsted Common*

Bricks

Furze was particularly valuable because it could be grazed throughout the year and was not at the mercy of drought and frost. Many witnesses mention that they sold furze to local bakers and brewers. John Newell, 67, Henry's brother, sold some to Baker Sear. William Sear is recorded as a High Street baker in the 1851 census, employing two men. Sear is an appropriate surname for a baker, who prized furze above wood because it burned hot very quickly and left little ash - a significant factor, Chris Howkins pointed out, if you bake loaves in the bottom of the oven.

William Saunders had cut furze for a living before finding success in hospitality and farming. Furze was still central to his business model:

I used to use a good deal of the furze and fern myself in the Anchor and the premises. I used the furze in the ovens for baking the bread and for the bottoms of my ricks and for the bottoms of the cattle yards, to be trod into dressing. The fern was also used for litter when we were short of straw.

James Holliday, 79, had been Augustus Smith's bailiff for 30 years and had worked for Smith's father at Ashlyns Hall for 20 years before that. "We used to brew our own beer and bake our own bread and we used to burn furze and wood and anything we could get. We used to run for a lot of furze for lighting the fires".

In fact, furze was so valuable as a fuel source that it was sometimes grown as a crop in the nineteenth century. Today there is a small wood on Coldharbour Farm called Furzefield Wood. The 1840 tithe map shows a very large field on the farm was given over to this purpose.¹² John Butterfield, 65, remembered five fields of furze of which three or four were ploughed up on the instructions of Lord Bridgewater's steward. We read in parentheses "Mr Thesiger objects to this evidence as being irrelevant", and John Butterfield's childhood memories are deftly nudged into the sink hole that awaits all our memories sooner or later.

¹² Tithe map of Berkhamstead, St Peter is available online at The Genealogist or free to access in the National Archives at Kew ref: IR 30/15/22.

By 1840 the field had been subdivided, but a small area was still producing furze. Coal was becoming more viable for the estate, but most people still used furze and wood for their hearths. Furze was still being collected from the common at the time of the trial in 1866 but the days of large-scale harvesting were long gone.

The brick kiln near Coldharbour Farm is sometimes referred to in the evidence as “the old kiln”, sometimes as “Holdsmith Kiln”. John Newell, who helped his father there, remembered: “the kiln belonged to the Earl of Bridgewater and the bricks made there went towards building the mansion”. John’s brother, Henry Newell, who had witnessed the highly charged confrontation on the common had also assisted his father at the kiln as a boy:

Holdsmith Kiln... stood a little this side of Cold Harbour Farm. The brickyard was fenced in with rough rails. It contained quite 2 acres and the clay was dug in the yard. It was called a three-holed kiln and burnt furze and wood. I recollect the kiln being done away and the yard laid into the common. The kiln was built before my time.

Brick making continued at Aldbury Common’s Outwood Kiln. Thomas Cox aged 78 states as follows:

I live at Ringshall. I was born at Pitstone, lived there till I was about 13 years old, I then went to farm service and enlisted for a soldier in the year 1805, in the marines, was at the Battle of Trafalgar, and got my discharge in 1815. In 1816 I went to Ashridge and worked on the estate 47 years. I was employed brick making on the estate. The first place I burnt at was Ivinghoe Common. The next place was Outwood Kiln, in Aldbury Parish. We used furze for burning... cut on Berkhamsted Common and carted to the kilns. It took a 1,000 furze to burn a kiln of bricks. One kiln held about 16 or 17,000 bricks. The second kiln would require 700 furze and would burn 10,000 bricks. Each season we should burn about 28 kilns (14 in each kiln). We were burning constantly for about 8 years. In the 8 years we cut the furze fields belonging to Cold Harbour Farm twice. They consist of about 30 acres.

The scale of brick making, and furze cutting, seems heroic, let alone taking part in the most famous battle in British naval history. Attestation papers show that Thomas enlisted in the Royal Marines at St Albans on 26 March 1805. He gave his age as sixteen, occupation “labourer,” and signed his name with a cross.

By the time of the 1861 census he was living in Ringshall. He was 72 years old and gave his occupation as “Brick maker”. His wife, Fanny, 53, was a Straw Plaiter. One son, John, and two grandchildren were at home on the night of the survey, as well as two lodgers. Thomas Cox died, aged 87, on 11 December 1875, and was buried at Little Gaddesden. An inscribed wooden cross later became detached from his grave but is preserved in the church.



**Thomas Cox's memorial in Little Gaddesden Church.
"IN MEMORY OF / THOMAS COX / WHO FOUGHT AT /
TRAFALGAR / DIED DEC XI /MDCCLXXV AGED LXXXVII"**

Thomas Waterton, the rough carpenter who had built up quite a flock of sheep prior to the drive, is one of many witnesses who remember the scarcity of furze towards the end of the time Ashridge House was being built.

Above 40 years ago I cut furze on the common for 8 or 9 seasons in succession. I think there were 20 of us so employed, sometimes more, sometimes less. The furze so cut was used at the Outwood brick kilns. The furze was cut so low that at last we were obliged to mow it.

Cutting furze, as you might imagine, was an occupation requiring specialized tools, clothes and skill. There is a certain amount of professional distaste in Thomas' memory of the effects of over exploitation. John Chapell, 69, remembered that "The common was pretty well cleared of furze by the time Lord Bridgewater had built his house." William Bell, 67, remembered that by that time "you could not find a bit of furze about the common as high as your shoe". William Waterton, our gravel digger, had also cut furze at this time: "The common was nearly or quite cleared of furze for 8 or 9 years, all paired down as clean as could be." Thomas Kelling, 78, a lifelong Aldbury resident, concurred, "It was grass almost instead of furze. There was no dispute about anything then. Lord Bridgewater done as he liked. Nobody interfered with him. When Lord Bridgewater had what he wanted. Other people had the rest."

The exhausting of a renewable community resource presumably did not unduly concern Lord Bridgewater because he had his own supply - on Coldharbour Farm. Overexploitation of furze may not have been an infrequent occurrence on the common. Pehr Kalm noted that the furze was "a hand's breadth high" when he visited in 1748, because, he said, the poor people were cutting it and taking it home for fuel.¹³

Inevitably, as demand for the golden egg threatened to kill the goose, conflict would arise. Joseph Hall, 58, used to cut furze with his father when his father's work on the estate was slack:

My father used to sell the furze out of the parish, or to people in the parish, or in fact to anybody. Sometimes, if it was found out the furze was sold out of the parish, there would be a little enquiry about it and check it for a time, but after a bit all would go on as before.

¹³ Mead, W.R., *Pehr Kalm: A Finnish Visitor to the Chilterns in 1748* (2003)

William Bell did not follow the furze carts himself but remembered that Joseph Swaby “had instructions to do so from the estate office, in case furze was taken out of the parish. Parties were caught taking the furze to Bennetts End Kiln, Hemel Hempstead, and Woodcock Hill, and have been punished for it”.

John Newell, who sold furze to Baker Sear, remembered “I know [Charles] Chappel went to jail for drawing furze off the common, and John Putnam for cutting it. I was a boy at the time. I don’t know where Chappel took it or whether he took it out of the parish or not.” In fact, we can help him. Court documents from 1814 show that some of the furze, unfortunately for them, was destined for a kiln in Bennetts End. Both Chappel and Putnam are languishing in Hertford Gaol in August 1815, when they apply to be released under the insolvency act. Lord Bridgewater agrees to release them of their debts to him on signing a promise not to reoffend. Whether their other creditors, mostly grocers and bakers (named Sear, incidentally), and in Chappel’s case, sellers of horse provender, were equally magnanimous, is not recorded.

John Butterfield’s testimony suggests that furze may have been spirited away from the common, and the parish, in industrial quantities.

I knew the common well. I’ve been over every yard of it, and I have cut both furze and fern. I have drawn a great many to my father’s brick kiln... a kiln where he made bricks to be delivered to Lord Bridgewater - at a price. Afterwards my father had a brick kiln on Caddington common and used to buy the furze from the common to burn there, and he was chased off. Mr Atty [Lord Bridgewater’s steward] found out that furze was taken away from the common, and he used to set keepers to watch, and I have known as many as 5 or 6 carts standing at the public house until it was dark, as the drivers were afraid to go onto the common while it was light. They were my father’s carts.

Even allowing for a certain amount of hyperbole, the fact that any furze found its way to Caddington, 10 miles away, shows the value of the crop to brick makers in the first half of the nineteenth century.

When the estate's private supply of furze had also been exhausted, John Newell tells us "they took to burning coals at the kilns". When the mansion was finished the estate discouraged large scale harvesting of furze. Joseph Butterfield remembered, "George Atty, Lord Bridgewater's agent... used to try to stop the people cutting the furze, but he could not stop them. I remember the furze afterwards growing high - as high as my shoulder. It grew for several years without being cut."

Joseph and his brother continued to cut furze on a small scale, as did Nash Duncombe, 64, who told the court, "... it is not many months since I had some from the common." This was however at a very different scale from the mansion building days. John Butterfield tells the court "I have [recently] carried furze home on my back" and known many others do the same, "I never heard anybody objecting to persons carrying away furze in this manner." William Saunders was "never interrupted in my life," removing furze from the common for his pub and farmyard and had also harvested some recently.

Removing furze by cart though, was another matter. Several of the witnesses mention one particularly redoubtable furze cutter still operating in the 1860s:

*CUTTING FURZE. - William Ashby was charged with cutting and taking away some furze from Berkhamsted Common, value 3s. 6d. - Henry Butterfield stated that on the 28th October, he saw Ashby going along by Hill Farm with a donkey load of furze which he took to Northchurch, where he sold it at different houses. Ashby asked whether witnesses could say where the furze was cut? - Witness: I can't tell where it was cut, but I saw you with the donkey cart go across the common. The case was dismissed.*¹⁴

The estate would take someone to court for 3s worth of furze but had been quite happy to level the entire common for its own purposes. The iron fences that appeared on the common seemingly overnight in 1866 had actually been in position for years: they were just invisible.

¹⁴ 'Great Berkhamstead Petty Sessions (William Ashby)', *Hertford Mercury and Reformer* (Nov 1862)

Roads

“Sometimes a gravel pit is just a gravel pit”, as Freud, a keen archaeologist, might have said. But what if the gravel pit – like the one in the garden of Woodyard Cottage - was dug through a road: the only all-weather route across the breadth of the common? There are two possibilities. One is that gravel was discovered, in a ditch by the roadside say, or washed on to the road by a storm, and Lord Bridgewater decided, reluctantly, that his own road-building plans trumped the needs of other users, who would in any case benefit from his investment in a new road from Northchurch to Ringshall. The other explanation is that a hole was dug for a different reason altogether and that the gravel was simply a serendipitous find. The hole, in other words, was dug in the road to put it out of action. This theory would take us into the territory of “Road Capture”.¹⁵ The key piece of evidence supporting this theory is that Lord Bridgewater had form.

George Whybrow, writing in the 1930s, suggests that the 7th Earl of Bridgewater had already blocked the road by making a pond where the road from Whitehill to Nettleden leaves the common and built Berkhamsted Lodge on the line of the road, making a similar encroachment on the common.¹⁶ Horseshoe Pond is not mentioned in the witness evidence, but it is still there. There is, however, plenty of discussion of the road blocked by the woodyard, and other routes, particularly the Broad Green Drive, especially concerning the status of the road, or roads, prior to the intervention by the 7th Earl. Whilst most of the evidence from both sides feels unspun and spontaneous, the road evidence, by contrast, often appears split along “party political” lines.

¹⁵ A similar case of road capture occurred at Gaddesden Hoo in 1887-9: Rollitt, L., ‘Hoo-Ha at Gaddesden Hoo’, *Chronicle*, v.XIV (2017)

¹⁶ John William Egerton, the 7th Earl of Bridgewater, was a former cavalry officer and Tory politician when he inherited the Ashridge Estate on the death of ‘The Canal Duke’ (Francis Egerton, the 3rd Duke of Bridgewater) in 1803. It was the 7th Earl who built the present house at Ashridge between 1808 and c1821. When he died in 1823, his wife Charlotte Catharine Anne Egerton, Lady Bridgewater, lived at the house until her death in 1849.

“I helped dig the pond where the road used to be, if ever it was a road”, says John Field, 65, “There were gravel pits there long before the road was done.” Samuel Garrett, who helped build the pond, stated confidently: “I believe there were no roads on the common till Lord Bridgewater made them. I never knew of any. He made the road from Northchurch over the common towards Dunstable.” Thomas Collier, 62, remembered that the way blocked by the woodyard had been a ride, not a road, “there were no marks of wheels or other traffic. After I left my first work there (stone breaking) gravel pits were dug in that ride. I think they were first dug in the countess’s time. I never saw or heard of any person using that ride as a road.”

Was Thomas Collier is protesting too much? Whatever the case, we do not need our witnesses’ conflicting memories on this point. Roads are clearly marked running along the top and bottom of the common on the earliest Ordnance Survey Drawing, 1806. (This also incidentally shows the brick kiln in a rectangular enclosure on the southern edge of the common, south east of Coldharbour Farm). In fact, the estate’s own plan from 1762 shows the old road across the top of the common.



Detail from Ordnance Survey Drawing, Hemel Hempstead, 1806¹⁷

¹⁷ Ordnance Survey Drawings, *Hemel Hempstead*, OSD 150 (1806), shows all the common, available online at <https://commons.wikimedia.org/wiki/>

Perhaps after all the chief source of confusion is a semantic one. William Waterton, who started his working life digging gravel, suggests:

It was a byway or a cart way not a regular road. I recollect the pond being dug across the way, and I also recollect the woodyard being fenced in and taken off the common. Part of the old way now forms part of the wood yard. The old way was thus destroyed and gravel pits at places were dug in it.

William Riddell, 72 remembered, “It was at that time [before the woodyard and gravel pits] a sufficiently hard road to allow loaded carts to go over it, although it was not pleasant in parts.”

Thomas Kelling remembered the road in use, “I have seen many flocks of sheep and herds of cattle driven that way to Hempstead market. Higglers [pedlars] used to go that way. Old Thomas Ashby always went across the common down to Cold Harbour and then into the road to Frithsden.”

Joseph Butterfield remembered that the old road was a “stoned road,” and that “anybody went along it with carts or wagons”. His brother, John, told the court that he himself had been along the road “hundreds of times”.

Many and many a people used to go this road with wagons and carts and drove sheep and beasts and swine along it to Hemel Hempstead market. It was the regular road from Frithsden to Aldbury. There was another road by Cold Harbour Farm along the bottom and this was used by persons with light carts.

At the point the old road reaches the western boundary of the woodyard, the modern footpath swings to the right uphill. It’s not a big deal for a walker or mountain biker but may have been viewed differently by a horse pulling a loaded cart. John Butterfield again:

The effect of making the wood yard was to stop this road, because it was necessary after the wood yard was made to go round by the houses which were built, and then they had to go up such a hill that no one

would go that way, and everybody afterwards went by the way which was over the middle of the common. [The Broad Green Drive].

In fact, people used to make their way across the common any way they could: “If one way was soft or wet,” remembered John Blacknell, “they would pick another. Wherever they found the best road they would go.” William Bell concurred, “People used to ride and drive over the common as best they could, and bad was the best. I have seen teams get set on the common, the ruts were up to the hobs.” “Up to your knees in water in some places,” Thomas Collier agreed.

Thomas Waterton remembered that Mr Meacher and his dray always used the Broad Green Drive on his way home from the Red Lion, Water End, to Ivinghoe, but “they never came that way loaded”. Jesse Holland had helped widen the drive:

I recollect it when it was merely a narrow way, not much wider than an ordinary cart way. I assisted in filling in the ruts and levelling it several times. I have seen carts go along it in the summertime. It was impassable for heavy traffic in the wintertime.

Lady Marian Alford had her own memories of the common at this time. She famously described how she had an armed escort to go to a ball in Berkhamsted in 1841.

Lady Bridgewater had cut green drives through the Common, for recreation not traffic, but her object was continually thwarted by the grass being cut up in every direction and the drives rendered impassable, as heavy carts were, from the spirit of contradiction and also for the purposes of illicit traffic, driven through and across them till they were reduced to ridges and furrows of mud.

Illicit traffic? She had a point: the common’s precious crop of furze was, as we have seen, a magnate well beyond the parish boundary. But the “spirit of contradiction” may not have been so important as the fact that the 7th Earl had, without consulting anybody else, destroyed the only hard road across the common. At the same time he had moved the boundary of his estate out into the common, perhaps to protect his new

extractive enterprise, and in his own “spirit of contradiction” built a private road (a good hard one, obviously) linking the estate to Coldharbour Farm, destroying the furze in the line of the route.

Samuel Garrett, who puddled the pond at the woodyard, was philosophical about Lord Bridgewater’s monopoly of the common’s fuel crop: “I never heard of any complaint in consequence of his doings.” He tells us that, “Lord B. built the house at the woodyard. Mr Hemmings, the wood steward, lived and died there.”

Theophilus Hemmings is recorded as living there in the 1841 tithe survey, where the property is described as “House & Garden Encroachment on Common”. The pond in the garden has a separate entry, its state of cultivation being recorded, presumably for completeness sake, as “Water”.

Hemmings was Lady Bridgewater’s wood bailiff. He was in charge of forestry operations on the estate, and it was he who had overseen the laying out of the drives across the common that she loved to ride along. But Hemmings was more than a gardener. He was the law. He had power to enforce warrants and arrest rule-breakers. In a time when penalties around the game laws were particularly severe, he had almost the power of life and death over the citizens of his sylvan kingdom. And he was living, with a perfectly clear conscience one assumes, on land stolen from the common.

Conclusion

The most surprising thing about the 25,000 words of evidence was the scale of use of the common in the first half of the nineteenth century. Rather than a marginal and (as Lady Marian Alford suggested) potentially dangerous place, the evidence presented to the trial shows that the common was, at least for part of the year, a busy working landscape. It was at the centre of a semi-communal system of agriculture, which profited all the local farmers, and allowed a certain amount of social mobility to entrepreneurial locals with no land of their own.

The fences that appeared on the common in 1866 were the end of a process, not the beginning of one. New roads built by the 7th Earl and Lord Brownlow either side of the common might be thought of as providing an uncomplicated economic benefit to the town, but, viewed through the prism of the trial evidence, suggest there may always have been an unstated intention to direct traffic around the central part of the common prior to its incorporation in the estate. Lord Brownlow's fences aimed to set in iron the project started by the 7th Earl, when the first spade was sunk into the old road across the common. The dell hole in the garden of Woodyard Cottage was the beachhead from where the opening shot was fired in the Battle of Berkhamsted Common.

When Lord Romilly, the Master of the Rolls, gave his judgement on the case he could not have been clearer. Smith's lawyers had proved nearly every commonable right. The testimony from both sides pointed "all one way" and the evidence was "comprehensive, conclusive and uncontradicted." Ironically, because this was the *raison d'être* of the CPS, they had not proved any general right for the public to access the common for recreational purposes, but the effect of the ruling was the same, the fences would not return.

Perhaps after all, the real battle was between private and public versions of amenity. Society was rapidly changing from an agrarian to an industrial one. The furze cutters had, with a few notable exceptions, already left the scene. The shepherds would follow them in due course. One final irony is that the Brownlows' last assault on the common set in train a series of actions that meant, whatever happens in the future, the nineteenth century past of the common is protected by 25,000 words of witness testimony. It can be rebuilt, like Ashridge House, brick by brick.

Let's raise a glass to the trial witnesses: the people who made the bricks behind the stone facade of Ashridge House, the forgotten history of a super plant, and the hidden geology that put the common at the centre of a semi-communal farming system stretching back hundreds of years - perhaps, in one form or another, to the beginning of farming itself.

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