



Note on Fencing

There have been several enquiries relating to fencing the boundaries of common land & the law relating to stock on roads. The following notes may be of interest to you

Stock on roads away from the common.

S.155 (1) of the Highways Act 1980 provides that if any horses, cattle, sheep, goats or swine are at any time found straying or lying on or at the side of a highway, their keeper is guilty of an offence. But no offence is committed where the highway passes over any common, waste or unenclosed ground. An offence under the section is committed if the animal strays from common land on to a road but moves along the road away from the common – Rees v Morgan (Solicitors' Journal 27 February 1976).

Fencing against Common Land

It is generally accepted that owners of land adjacent to a common have a customary duty to maintain a fence on the boundary of their land, to prevent stock from straying 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 duty extends to property located close to a common even if not directly adjacent.

E.g. the owners of houses 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.

If an individual owns the common with land adjoining it, there is still a duty to fence for the benefit of other graziers.

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 his land adequately against them*". (Gadsden 2nd Edition para 8-110).

Further information is available within the Commons Toolkit that can be accessed on the Natural England website www.gov.uk/government/organisation/natural-england or the Foundation for Common Land website www.foundationforcommonland.org.uk