

THE UN-WILDING OF BIRKBECK COMMON

In 2021, Natural England secured the removal and dispersal of one of Britain's few remaining herds of semi-wild Fell ponies, through an unsuccessful legal action that nonetheless inflicted crippling legal costs upon the herd's owner. BILL LLOYD investigates how what some people view as ecological vandalism came to be carried out in the name of "nature recovery".

Milton Haworth 2019, for GreatBritishLife.co.uk

In a property-owning democracy, it is considered politically unacceptable simply to confiscate private land rights in the public interest. So in order to achieve its objective of "nature recovery" for the public good, Natural England (NE) has for the last 25 years used voluntary Agri-environment agreements, backed by compensation payments, with farmers and landowners.

This voluntary model has been slowly tilting towards coercion, and major shifts took place with the Commons Act 2006 and the Agriculture Act 2020, under which state funding of "public goods" will replace state subsidy for agricultural food production. On particularly sensitive sites, such as commons and Sites of Special Scientific Interest (SSSI), when voluntary agreement is not forthcoming, NE can bring up the heavy guns and go to court. Once there, the eye-watering cost and legal sophistication of their barristers helps them run rings round any modest and unassuming commoner who dares to stand against them.

So it was in the case of Bill Potter, (80) who until October 2021 grazed his Greenholme herd of 22 Fell ponies on Birkbeck (pronounced Bur-beck) Common, (714 hectares, 1764 acres) part of the Shap Fells SSSI in Cumbria. When he refused to sign up to voluntary grazing prescriptions which he felt were unreasonable and unacceptable, he was prosecuted for grazing without the consent of NE. He was found guilty and although the conviction was overturned on appeal, the end result was the removal from their natural habitat of one of the most important of the native Fell pony herds, which are the only free-running horse populations in the North of England. This outcome can certainly not be called "rewilding" although it might be "un-wilding".

The iconic Fell pony herds of Cumbria are the wildest equines in the Lake District National Park, now a World Heritage Site. Their natural habitat is the high mountain and moorland areas of Cumbria, known as the fells, and the Greenholme ponies had grazed Birkbeck Common since "time immemorial"¹, probably since the Dark Ages. The herd was not domesticated, and most had never been handled. They were exceptionally hardy ponies, living outside at a height of 1500 feet above sea level, right through the winter, in rain, wind and snow. They thrived in some of the harshest conditions in the country, with no shelter and little supplementary feed, appearing with a lively new foal in the spring.

It was their acclimatisation and evolution in severe winter conditions which produced exactly the characteristics which made them so special,² and yet by the perverse logic of the State's nature recovery agenda their ability to live out on the



fells all winter came into conflict with the "public good" and with vested interests who had other plans. The pressure applied on Bill Potter to conform to these "voluntary agreements" over 20 years eventually resulted in the removal of the herd. The story of how it was done and why it was done raises serious questions about the tactics used by NE.

Moorland Man

Bill Potter was born in 1940, and left school in 1955 to start work as a full-time horseman, later a farmer and horse breeder on his own account. He was on the Council of the Fell Pony Society for 30 years and has bred many prize-winning ponies. He has never been in any doubt that if he and other hill-breeders were to accept the generous subsidy (amounting to hundreds of thousands of pounds per grazier) to remove the Fell ponies from their natural habitat, this ancient breed would lose those special wildness characteristics which he had spent his life defending, against the fashion for taller, fatter, softer, and quieter recreational ponies. He was offered compensation to take his ponies off the fell, but he did not take it, because money could not buy what he had, or replace what would be lost. No amount of money could compensate for the loss of hardiness and genetic diversity if his herd was removed from the fells.

Birkbeck Common is owned by Lowther Estates, who manage many thousands of acres in the Lake District, where, according to their website, they have relinquished grouse shooting and embraced rewilding. However a number of commoners, including Bill Potter, have rights to graze the Birkbeck common with sheep, cattle or horses. The common was designated an SSSI in 1988 and was entered into an ESA (Environmentally Sensitive Area) scheme in 1998, when Lowther Estates and most of the active graziers agreed to restrict the sheep grazing in return for financial compensation. Bill Potter declined to join the voluntary scheme and continued to graze his ponies. In July 2002 the Rural Development Service (RDS), a section of DEFRA, were concerned that the common was overgrazed, due in

part to Bill Potter exceeding his registered rights. They stated (in an internal memo) that “legally DEFRA has no power to stop him” but under the ESA scheme they could introduce “new restrictions” by imposing maximum livestock numbers based on his registered grazing rights.³

Bill had grazing rights for 100 sheep, five cattle and only two horses. Although he was grazing about 25 ponies, and no sheep or cattle, the collective grazing rights for the entire common allowed for 39 horses, 121 cattle and 2286 sheep (see note 13,) of which 13 horses belonged to his brother Ted. Together the Potter brothers were not exceeding the registered carrying capacity of the common for horses. The RDS therefore translated Bill’s grazing rights for sheep and cattle into rights to graze horses, through the standard metric of Livestock Units (one LU=one cow, or one horse or 6.6 sheep). Applying this formula was standard practice on NE land and it meant that Bill would be allowed to graze 22 ponies all year round.

Three months later, in September 2002, Lowther Estates wrote to DEFRA, and English Nature (as NE was then called), reminding them of a previous commitment made by a representative of MAFF (the Ministry of Agriculture that preceded DEFRA) that if Lowther could deliver consent for an ESA Agreement from all the other graziers, then “the Overgrazing Unit would deal with Bill Potter, in order to bring his grazing back to his registered right”.⁴

However NE remained powerless to act. Bill continued to graze 22 ponies. But in 2007 they again wrote to Bill Potter reminding him that his subsidy payments were at risk if he did not restrict his grazing to his registered rights. He complied, and his ponies grazed all winter.⁵

Means of Persuasion

In 2010, the stakes were raised when a new Higher Level Stewardship (HLS) Scheme was proposed on Birkbeck Common, offering a much larger pot to be divided up between the landowner and the graziers, in return for a further reduction in livestock numbers. Bill Potter declined to join, and the scheme went ahead without him.

In October 2010, NE wrote to Bill Potter, claiming that he would be bound by the new Agreement even though he had not signed up to it, reducing the total number of ponies that could be grazed during the all important summer months to seven, leaving Bill Potter with just five and threatening enforcement if the livestock numbers were exceeded.⁶ Bill remained unmoved by the threats, or the large sums on offer, for the same reasons as before. He had not signed up to the Agreement, he had a right to graze, and no amount of money would compensate for the loss of his herd.

NE made no attempt at that stage to restrict the winter grazing of ponies, even though the 2010 HLS Scheme required the sheep graziers to remove all livestock in winter, and NE reduced their payment for exclusion of winter grazing (Option H15), to take account of the presence of the ponies. Despite that reduction in payments, according to Natural England, the graziers on Birkbeck Common received about £50,000 per year between them in respect of



Milton Haworth 2019, for GreatBritishHills.co.uk

Agri-environment payments: that is £500,000 over the ten year life of the HLS agreement, in addition to their Basic Payment Scheme receipts.⁷

In April 2012, Lowther Estates wrote again to the NE site officers, complaining that no action had been taken against Bill, and that the threat of a Commons Act 2006 Section 46 Notice “must be used.”⁸ This was followed two days later by a similar letter from their land agent, requesting that Bill be informed that he needed SSSI consent to continue to graze his ponies.⁹ A week later, the NE Site Officer A wrote to NE Officer B, acknowledging that pressure to take regulatory action was being applied by Lowther’s land agent who was not only “politically very well connected” but “very significantly, lives very near to our Director.” This Director was none other than the same MAFF officer who in 2002 had made a commitment to “deal with Bill Potter”.

Lowther’s agent had given “a fairly gentle push”, the Officer continued, but if no result was forthcoming, they could expect a “much harder one,” requiring officers to justify their inaction. Officer A was clear that the push should be resisted, stating “As previously discussed, this is not a priority in terms of SSSI condition; the site is actually fine at the moment,” and “all regulatory approaches would be fraught with difficulty.”¹⁰ Officer B replied “Happy to discuss further and move to enforcement if needed . . . If the features of interest are not being damaged we will need to look at Commons legislation”.¹¹

Round-Up Time

The process of moving the goalposts had begun. Despite the clear opinion of the NE Site Officer that “the site is actually fine at the moment,” when Lowther Estates shouted “jump”, the managers at NE jumped. An Enforcement Officer coordinated a “gather”, or round-up of the Greenholme herd, removing them from the common so that Trading Standards officers could check their passports. The round-up may have had no basis in law, but it was clearly a matter of some importance, because the NE Officer, when discussing dates for the gathering, wrote “in fact I would do it while



Greenholme ponies on Birkbeck Common.

Photo by Tom Lloyd

they were eating their Christmas turkey if I had to.”¹² No passport irregularities were found, and Bill was shown not to be exceeding his registered rights. His ponies continued to graze, and in 2015, a NE Site Report¹³ stated that the HLS Agreement was having some success. Heather cover showed “a general trend upwards since 2005”, and the author concluded that “overall, this evidence is indicative of reduced levels of grazing since 2004, with a corresponding positive response in the vegetation structure from around 2005 or 2006 to the present.” The “unauthorised” presence of Fell ponies had been compensated for by lowering the permitted levels of sheep grazing.

Events then took a bizarre turn. In 2016 the case was discussed at a Board Meeting of NE, where the Head of Legal Services, no less, was instructed to “follow the Board’s steer in the Birkbeck Common case.”¹⁴ Everything that followed was steered from the highest level, and the gloves came off.

In September 2018, NE prosecuted Bill in a Magistrate’s Court under Section 28 of the Wildlife and Countryside Act 1981 for failing to obtain consent for an “operation likely to cause damage”, namely unauthorised grazing, and also using a vehicle to bring hay onto the common as supplementary feed when snow or other conditions required it. Bill denied the unauthorised grazing, but accepted that he had been giving supplementary feed. He maintained that he had been doing this for 40 years, as had his father before him, provided expert witness evidence that damage from the vehicle use was insignificant, and pointed out that the NE’s own Site Report confirmed that there was no damage to the site.

In court the Magistrate insisted on starting the hearing despite an application from Bill for an adjournment on medical grounds, refused to hear important submissions from Bill’s lawyer, and found him guilty without hearing evidence in his defence. The conviction cost him £16,000, but in spite of poor health and deep despair, he would not stay down. With the moral and financial support of a local crowd-funding scheme to help meet his legal costs, he appealed his conviction.

Bill was advised that it would not be possible to recover costs on such an appeal case, but he was confident enough in the strength of his evidence to let a judge decide, and the appeal was heard at Carlisle Crown Court in August 2019. Because no evidence for the defence had been heard at the trial, Bill’s defence made an Abuse of Process Application which was dismissed by the Judge. Had his evidence been allowed, he sought to argue that he did not need NE consent. He sought to challenge as inconclusive the allegation that he was damaging the Common and to suggest double-standards which amounted to victimisation and harassment. But he did not get the chance. Following medical reports, NE withdrew from the case and the appeal collapsed on the first day, to be settled out of court. Bill Potter’s conviction was overturned, his fine was quashed, and he was left with nothing but the costs.

His name had been cleared, but at a heavy price. His health was failing, and he was daunted by the cost of three more days in court. He agreed to settle and to hand over control of his ponies and his grazing rights to his son, intending to live to fight another day. When the total costs of his defence were finally assessed at over £80,000, and faced with the costs of another court case to argue against NE grazing restrictions that would ruin his business, it was the end of the road. Although his defence costs were met in part by generous crowd-funding and pro bono legal work, his son had no appetite to continue the fight, and in October 2021, most of the Greenholme herd was sold at auction.

It is hard to see where, without conclusive evidence of damage, there was ever any public interest in bringing the case, but the Board of NE had succeeded in removing the least domesticated of the Fell Pony herds from its natural habitat. NE deny that this was their objective, but they pursued a court case that led to the herd’s removal in the face of abundant evidence why it should be preserved: the special characteristics and dwindling gene pool of a vulnerable iconic breed on a World Heritage Site; the loss of species biodiversity on the common; Bill Potter’s registered right to graze; the evidence of their own officers concerning the satisfactory state of the SSSI; and



Of all Britain's semi-wild equines, the Fell pony probably makes the best working horse. The Greenholme mares would each bear and rear a foal every year that could be taken, broken and sold as a hardy working pony.

the supposed voluntary nature of the management schemes. Bill Potter's evidence was never heard, yet defending the case against NE caused him unsustainable financial damage. This disregard for the even-handed treatment of one of their stakeholders was done in the name of conservation, "nature recovery", "species diversity" and "public good."

Why?

The case raises many awkward questions, but the most puzzling question is why was Bill Potter's case taken up to Board level, and prosecuted at such a high level. NE manages 4266 SSSI sites, and in the minutes of their meetings held between 2014 and 2019 I could find no evidence of any enforcement action being steered by the Board, other than Birkbeck Common.

The prosecution had cited damage to dwarf shrubs (heather, for example) on the SSSI, but the extent and the cause of that damage was not established beyond doubt. Bill Potter's defence quoted the earlier opinion of NE's officers that "the site is actually fine" with no damage to the features of interest, supported by evidence that sheep and deer are the primary grazers of dwarf shrubs, that ponies do not eat heather "unless pushed"¹⁵ and that deer numbers increase when sheep are removed.¹⁶ He maintained that wild Fell ponies are an integral part of the ecosystem, not a threat to it.

NE may have been able to discount Bill's evidence, but if so, why did they withdraw before that evidence was tested by the appeal judge? If they were confident enough to commit a six figure sum of public money to a court action, why did they not press home their scientific advantage and demonstrate that they had the whip hand, legally and morally, as well as financially?

The prosecution of Bill Potter not only risked damage to NE's reputation for negotiated settlements and fair dealing, but also risked that their long campaign against him, prompted at key stages by the landowner, may have been *ultra vires* (ie unlawful). They are obliged to observe the guidance and safeguards for the cultural and social fabric of the locality,

which state: "Wherever appropriate, it should also take account of its duty under s.37 of the Countryside Act 1968, to have due regard to the needs of agriculture and forestry and the economic and social interests of rural areas."¹⁷ And "in all cases they should seek to ensure that adverse effects are exceptional."¹⁸ The NE board has a clear obligation not to create artificial habitats: "The scheme should have regard to traditional land management practices on the site, and the extent to which they have contributed to its special interest. Only where there are particular ecological circumstances that would justify this, and with the agreement of the land manager, should it seek to achieve a condition that has never existed on the land."¹⁹

Without doubt the removal of ponies from Birkbeck Common represented a new and artificial grazing regime which had not previously existed, and which certainly had "adverse effects" on the Fell pony breed, yet they ducked the opportunity to demonstrate the "particular ecological circumstances." Their own officer's reports clearly recognised the cultural and historical importance of the Fell ponies on Birkbeck Common: "The area is managed by a historically and culturally important system of commoning and grazing by Fell ponies." and "The landscape continues to be maintained by the traditional practice of commoning and grazing by Fell ponies."²⁰ Furthermore DEFRA guidelines recognise that conserving and enhancing biodiversity is a Priority Action²¹ which applies to semi-domestic ("feral") animals "not subject to routine handling by a farmer"; and that biodiversity includes "native breeds . . . associated with traditional land management required to conserve important habitats."²²

Curiouser & Curiouser

The NE Board minute did not provide any detail as to why they directed the course of the prosecution, but there are some factors to consider. First, the same consultant to the land agent for Lowther Estates, who had written to NE in 2010 demanding enforcement action was a Non-Executive Director on the Board of NE from 2014. According to the published minutes of the Board on 11th May 2016, when the Chief Executive ordered the Chief Legal Officer to "follow the Board's steer" the Non-Executive Director acted properly by declaring an interest and leaving the room when the matter was discussed.²³

Secondly, one feature of Birkbeck Common is curiously absent from the documentation so far referred to in this article. Birkbeck Common has long been operated as a grouse moor where Lowther own the shooting rights. On 12 August 2014 — "the glorious twelfth" — the Lowther Estates leased the grouse shooting rights on Birkbeck Common to a new tenant.²⁴

Grouse feed on tender, green shoots — particularly heather and other dwarf shrubs — and if those tender shoots have been eaten by sheep, or deer, or rabbits or hares, or ponies, then the grouse numbers will be well down. The profitability of a

grouse moor depends on the number of breeding pairs which are observed during the crucial annual spring count. The spring count determines how many days of shooting can be realistically offered in the season that follows. If a grouse moor is to be commercially successful, any nibblers (such as rabbits, hares, sheep, deer, or ponies) must be well controlled, especially in early spring. Predators which take eggs and chicks from the grouse nests must be destroyed, so foxes, badgers, carrion crows, hooded crows, stoats, weasels, polecats, adders, grass snakes, rats and feral cats are considered vermin, and their bio-diversity value is discounted, although some raptors are protected.²⁵ The farmed grouse are considered to be of greater importance than the ponies, the wild grazers, the predators, and any collateral damage.

The new lease included an obligation to “destroy insofar as the law shall allow all birds, reptiles, or vermin destructive of game, or the eggs thereof . . . and to destroy as far as practicable all rabbits.”²⁶ The lease also required the tenant to construct new “butts” – the sunken enclosures where each “gun” stands to shoot the driven grouse. On 16 January 2015, NE granted to the new tenant SSSI consent for 25 timber and turf grouse butts and three six-metre by six-metre fox control middens. The consent included conditions that there should be no damage from drainage channels nor any concentrated turf removal. However, according to Bill Potter, the grouse butts had been already constructed, and photographs were produced showing that drainage operations and turf stripping had already taken place (see photo, above). NE have denied that consent was given retrospectively. But the consent for the butts and the middens is backdated to 2014, and the public copy of the application has no date or signature. Bill Potter maintained that the damage from the butts exceeded any damage caused by his ponies, yet it escaped sanction, while he was prosecuted.²⁷

NE are generally supportive of grouse shooting operations, for several reasons.²⁸ It makes sense for NE to co-operate with owners of grousemoors on SSSI commons since the landowner — usually the Lord of the Manor — can apply pressure on the graziers, who are often his tenants, to observe management prescriptions. The new shooting tenant would no doubt comply with his lease and instruct his grouse keeper to destroy the specified predators, which would favour all ground nesting birds. A grouse moor provides safe habitat for the wading birds: curlew, lapwings, plover, redshank, and snipe, as well as ground nesting species such as meadow pipits and skylarks. These species will thrive, and conservation of bird habitat is trumpeted as a public benefit, even though any predator species are classed as vermin and will decline.²⁹

The 25 new grouse butts and three fox control middens would not come cheap, and the new tenant was clearly investing in a commercial shooting operation. NE were willing to nod through the consent, and thereby support



Turf stripped for some of the 25 grouse butts

the new venture. That in turn would encourage the landlord to gain the compliance of the grazier tenants. They would all pick up a whopping subsidy, except that Bill Potter's ponies were in the way, because they were thought to be nibbling heather shoots which were intended for the grouse.

Double Whammy

It was in May 2016, a few months after the new tenant built the new butts and shortly after the time of the spring count, that the Board of NE began to

“steer” the long-standing and troublesome Birkbeck case, after which the prosecution of Bill Potter was initiated. It may have been a co-incidence, but if so, it was a useful one for NE and for Lowther.

Although the purpose of SSSI and Common Land regulation was to transfer land rights from private ownership to the State, there was a lack of legal synthesis between well-established common rights and new conservation legislation.³⁰ This was a particular problem where commoners refused to join voluntary management schemes, and several commons in Cumbria had been used as case studies in discussions of that broad conflict of interest.³¹ By 2014, Birkbeck was the only common out of ten large SSSI schemes in Cumbria which had not been brought into line. Bill Potter's 20 year dogged resistance to the confiscation of his rights demonstrated that commoners who refused to be bought off could stand their ground against the cohorts of scientists and bureaucrats. Successful legal action would give NE a precedent to resolve the fundamental contradiction of public good vs. private rights. If they could achieve legal victory at Birkbeck, they could force compliance in other cases where commoners refused to be bought off.

Because regulatory action was “fraught with difficulties” and because the grouse moor was not shot intensively, Lowther Estates could not be sure that the benefit, or even the outcome, of litigation would outweigh the costs.³² But if the landowner was unwilling to risk his private resources to bring the prosecution, Natural England, using public funds, was not afraid to take the lead. Although Potter's conviction was overturned on appeal and he was exonerated, NE scored a double whammy: the inadequacy of the law was never tested, and the Greenholme ponies came off the common. It would take a brave man with deep pockets many years to recover what has been lost.

Questions

To summarise, Natural England worked closely with a major landowner, at the most senior level, seemingly in support of a commercial grouse shooting operation. They rewarded compliant graziers who joined the schemes with an income of at least £50,000 per year³³ even without Bill Potter joining the scheme. These compensation and incentive payments were entirely normal, and there is no suggestion of impropriety on the part of any officer, executive, non-executive or agent



of NE or Lowther. No doubt they acted in good faith, in accordance with their brief, and in what they believed to be in the best interest of biodiversity and the public good, and the objectives of NE, but that does not make them right. And there is the rub.

The normal policy of “recovering nature” backed by financial inducement, vested interest and legal enforcement, has led to the genetic diversity of the wild Fell pony being consistently overlooked and undervalued, so that it has been moved to the bottom of the hierarchy on the nature recovery agenda. The ponies’ ability to live wild is apparently incompatible with private shooting interests, and with current notions of what constitutes “public good.”

There remain several valid questions. Is this really what NE is for? Whose interests are being served here? How is it that the punitive costs of our legal system can rub out a unique herd and destroy the livelihood of one small man, to the benefit of a large estate, without all the evidence being heard either at the initial trial or at the appeal? Does the removal of the “wrong” species such as ponies, foxes, badgers, carrion crows, hooded crows, stoats, weasels, snakes, rats, feral cats, rabbits, and hares in favour of ground nesting birds really count as nature recovery, conservation, or species biodiversity? Why is the gene pool of the native Fell pony not included in the calculation of Biodiversity Net Gain?

Although NE might argue that this was a victory for biodiversity and “public good” over private common rights, that may only be true because NE get to define what is meant by these terms. It may not be true at all if the real outcome is the sacrifice of the ancient rights and private interests of the small commoner to the private interests of a powerful landlord, and if the “public good” is in fact an arbitrary construct, a mantra used to justify an opportunistic land-grab.

Whatever the rhetoric, the reality is that one of the last and least domesticated herds of native Fell ponies has been sacrificed to Mammon. Much of the evidence suggests that it happened because the Government agency charged with managing Birkbeck Common, acting lawfully, allowed itself to be pushed along by the interests of a private shooting operation, and then allowed those interests to obscure considerations of equity and natural justice and so to destroy the livelihood of an honest and honourable man. Natural

England deny that this was the case. They state: “shooting was not the reason why we took action against Bill Potter. The public interest in bringing the case was to prevent damage to an SSSI.” But since NE experts repeatedly reported that the common was in a good state and had improved over a 10 year period, one must question whether there was a public interest in losing one of the last of England’s few herds of Fell ponies.

REFERENCES

References 3 to 14 relate to items of correspondence as described in the text. Most of these were retrieved through a Freedom of Information request. *The Land* holds copies of these, as well as the documents cited in references 2, 15, 23, 24, 27 and 33, and can supply them to interested readers on request.

1. A legal term meaning that a property or right has been enjoyed for so long that its owner does not have to prove how they came to own it.
2. Bill Lloyd, *The Upland Herds of Fell Ponies are a Special Case*. 27 Jan 2021.
7. These figures were provided by Natural England. Screenshots we have obtained of the *Schedule of RPA Payments* made to four graziers on Birkbeck Common at the time suggest that the sums were up to five times as high as this.
15. Sophie Lake, *Upland Pony Grazing: A Review*, Footprint Ecology.
16. Cumulus Consultants Ltd, *Changing Livestock Numbers in the UK Less Favoured Areas – an Analysis of Likely Biodiversity Implications*, 4 December 2012.
17. DEFRA *Sites of Special Scientific Interest: Encouraging Positive Partnerships*, SSSI Guidance. Code of Guidance 2003, Paragraph 8, http://www.adlib.ac.uk/resources/000/076/893/DEFRA_SSSI_code.pdf
18. Ibid, para 77.
19. Ibid para 31.
20. Alison Farmer Associates, *Natural England: Broad Areas Review, Area: EA1 Birkbeck Fells to Whinfell*, 2005, p. 72.
21. DEFRA, *UK Country Report on Farm Animal Genetic Resources* 2012, p.53. <https://assets.publishing.service.gov.uk>
22. Ibid p.14.
23. Natural England Board, *Confirmed Minutes of the Sixty Second Natural England Board Meeting*, 11 May 2016
24. *Lease of Sporting Rights on Birkbeck Fell* (extracts) 12th Aug 2014.
25. *The Effects of Grouse Moor Management on Raptors and Ravens*, Game and Wildlife Conservation Trust, 2020, www.gwct.org.uk
26. *Lease of Sporting Rights*, op cit 24.
27. The Consent Notice of January 2015 is available from The Land. Middens are piles of rotting carrion whose smell lures foxes and other predators into snares.
28. *Grouse Moors: Working Together to Achieve Shared Outcomes*, Natural England News Story, 13 August 2018, <https://www.gov.uk/government/news/grouse-moors-working-together-to-achieve-shared-outcomes>
29. Game and Wildlife Conservation Trust, *Grouse Moor Management Can Help Support Breeding Waders*, no date, <https://www.gwct.org.uk>
30. C Rogers et al, *Contested Common Land: Environmental Governance*, Routledge, 2010.
31. J Aglionby, *Can Biodiversity, A Public Good, be Delivered on Common Land through Management Organisations Founded on Optimising Private Property Rights?*, 2008, www.researchgate.net
32. Ibid.
33. See note 7.

Bill Lloyd is a Cumbrian farmer with a long association with Fell ponies. A longer, fully-referenced version of this article is available as a PDF on request from editorial@thelandmagazine.

This article is based on the work of Elynd Ashcroft, the sole solicitor working on the case from 2013 to 2019. She worked tirelessly to protect Bill Potter, the Greenholme Fell Ponies and the cause of Fell Ponies on the Cumbrian commons. Her firm, Gaynham, King & Mellor decided to forego a very large percentage of the fees earned by her work.

The Land will be happy to print any response from a representative of Natural England or the Lowther Estate.