

**From:** Paul Hendry <[Paul.Hendry@westberks.gov.uk](mailto:Paul.Hendry@westberks.gov.uk)>

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**To:** The Clerk of SMPC <[the.clerk@stratfield-mortimer.gov.uk](mailto:the.clerk@stratfield-mortimer.gov.uk)>; Stratfield Mortimer Parish Council <[the.clerk@stratfield-mortimer.gov.uk](mailto:the.clerk@stratfield-mortimer.gov.uk)>

**Cc:** Danielle Davis <[Danielle.Davis@stratfield-mortimer.gov.uk](mailto:Danielle.Davis@stratfield-mortimer.gov.uk)>; Sallyann Taylor <[sallyann.taylor@stratfield-mortimer.gov.uk](mailto:sallyann.taylor@stratfield-mortimer.gov.uk)>

**Subject:** RE: Tree on phone line in Brewery Common outside Brew Cottage/responsibilities for Brewery Common

Danielle – Further to previous email, I apologise again for tardy response to the previous emails on this. I simply got overtaken by volume of emails and requests at the time. Always happy to take a call for anything like this and I can then refocus.

Anyway to your question, and also Lynn's before this.

Ownership of Commons and the management arrangements set out in a scheme of management are generally two entirely separate matters. Brewery Common is not the only common which is privately owned but nevertheless managed by West Berkshire Council. Bucklebury and Wokefield Commons are just two which spring to mind. Ownership and the imposition of schemes of management are grounded in the peculiar social circumstances at the time. The various commons acts were designed to protect the rights of commoners and the rights of the public to access common land. We have to bear in mind that common land is a bit of a misnomer – 'common' simply means private land over which others have certain rights, i.e. to collect timber, gravel etc, and for recreational purposes for the benefit of the 'neighbourhood'. Protections were often set out in a scheme of management in return for the landowner granting rights of public access in perpetuity. Its worth bearing in mind that Schemes of Management came into being in the late 1920's and 1930's, the wider population at that time having limited access to the 'countryside' (hence Kinder Scout and mass trespass).

Fast forward 100 years and Mortimer PC and WBC have responsibilities for Brewery Common. The parish council are freehold landowners with all the usual rights and responsibilities. Some (but not all) aspects of management are vested in WBC as a consequence of the published Scheme of Management (1927). This is binding and the only way WBC might divest itself of any responsibility within the Scheme would be to somehow promote a new, revised version, and get it through a rather complicated consents process (I don't have detail on that).

It should be noted in the Scheme (attached) that there are lots of 'the council may' and very few 'shall' references in the Scheme, so there are very few obligations/duties and there may be times WBC chooses not to do something referred to in the Scheme. On the other hand WBC has a duty for matters such as encroachments etc., including unauthorised encampments/trespass etc. You may be aware that in terms of tree works we (Countryside Service) did ask for a contribution from the Parish for essential works carried out a couple of years ago (we never did invoice you to my knowledge). This is because WBC has no DUTY to the trees, and public safety and the management of trees ultimately lies with the Parish Council:

Protection and  
improvement of  
common.

3. The Council may execute any necessary works of drainage, raising, levelling, or fencing, or other works for the protection and improvement of the common, and shall preserve the turf, shrubs, trees, plants, and grass thereon, and for this purpose may, for short periods, enclose by fences such portions as may require rest to revive the same, and may plant trees and shrubs for shelter or ornament, and may place or erect seats, shelters, pavilions, drinking fountains and conveniences upon and light the common and otherwise improve the common as a place for exercise or recreation ; but the Council shall do nothing that may otherwise vary or alter the natural features or aspect of the common or interfere with free access to every part thereof, and shall not erect upon the common any shelter, pavilion or other building without the previous consent of the person entitled to the soil of the common.

This begins to answer some of your question I think. So, in brief Mortimer PC have all the usual rights and responsibilities, whilst WBC has some but very few duties under the Scheme.

Looking at Lynns request further she mentions the confusing nature of this arrangement:

*I do note that every time we raise an issue with Brewery Common the standard response is that we own it. This is of course true, but WBC apart from yourself do not seem to know that under a scheme from 1899 WBC maintain it. I don't know how easy it is to update your records if a member of the public reports an issue at Brewery Common.*

I will try to resolve the issue whereby staff here in the Service and maybe in the Contact Centre, misunderstand that the council have a management role and that although the land is shown on our mapping as owned by Mortimer PC, WBC do retain some responsibilities. Largely however the only duty ('shall') relates to encroachments and this most commonly relates to unauthorised encampments; travellers, including new age, fly grazing etc. All other requests, including those relating to trees really should come through the Parish as landowner as this protects your rights. We can then discuss whether the council does, or does not, implement any management actions taking into consideration budget, risk, priorities etc.

I hope this explanation helps. Always worth seeking independent advice and the Open Spaces Society are excellent.

Paul

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