
**SUBMISSIONS IN SUPPORT OF APPLICATION TO CORRECT THE REGISTER UNDER
SECTION 19 OF THE COMMONS ACT 2006**

1. These submissions are made in support of an application under section 19 of the Commons Act 2006 (the "**2006 Act**") to correct the Register of Commons Land.

Background

2. This application relates to a small area of land at East Knighton, adjacent to "Oak View", East Knighton, Dorchester, Dorset, DT2 8LH (the "**Land**"). The Land is approximately 0.8 acres in size and is located in the parish of Winfrith Newburgh in Dorset.
3. The extent of the Land is shown shaded green on the attached plan provided by Dorset Council as part of the results of the Commons Search dated 29 August 2019 (Tab 1, page 5 of Exhibit MS1).
4. The Land was formerly a part of Knighton Heath, which was part of a wider area of common land known as Winfrith Heath. An extract from the Ordnance Survey map is appended to this application (Tab 2, page 12 of Exhibit MS1).
5. The freehold owner of the Land is Malcolm Shakesby. Mr Shakesby purchased the Land in 1986.
6. The Land is currently registered as common land and identified with the reference number CL98 and descriptor Knighton Common. No rights of common are registered on the Register of Rights.
7. In 1957, the Winfrith Heath Act (the "**1957 Act**") was passed. This had the effect of extinguishing rights of common over areas of Winfrith Heath. The plan of the area over which commons rights were extinguished is appended to this Application (Tab 3, page 14-15 of Exhibit MS1). The Land is not included in the area of land covered by the 1957 Act. It is submitted that the failure to include the Land within the scope of

the 1957 Act was the result of an administrative oversight on the part of the drafters of the legislation.

Provisions for de-registration of the Land as a common

8. Section 19 of the 2006 Act makes provision for a commons registration authority to amend its register of common land for any purpose detailed in section 19(2) of the 2006 Act.

9. These purposes are described as follows (emphasis added):

"(a) correcting a mistake made by the commons registration authority in making or amending an entry in the register,

(b) correcting any other mistake, where the amendment would not affect-

(i) the extent of any land registered as common land or as a town or village

Green; or

(ii) what can be done by virtue of a right of common;

(c) removing a duplicate entry from the register;

(d) updating the details of any name or address referred to in an entry

(e) updating any entry in the register relating to land registered as common land or as a town or village green to take account of accretion of diluvion"

(section 19(2) of the 2006 Act)

10. This application for correction of the Register is pursued in compliance with purpose (a) (highlighted in bold above).

11. Section 19(3) of the 2006 Act makes clear that references to a mistake can include mistakes made both before and after the commencement of this section.

12. Amendments can be made by a commons registration authority 'on the application of any person' (section 19(4) of the 2006 Act).

13. It is submitted that the Land was initially added to the Commons Register in error and that the Land has been mistakenly designated as common land since the date of its registration.

Details of the Registration

14. The Register of Commons Land records that the Land was added to the Register pursuant to application No. 206 made on 24 June 1968 by Mrs Monica Killingback. The entry is recorded as entry No. 98 and dated 28 June 1968.
15. The Land was registered in the first wave of registrations made under the Commons Registration Act 1965 (the "1965 Act") and was registered during the relevant period specified under the 1965 Act. Section 1(2) (a) of the 1965 Act sets out that Land must have been provisionally registered as common land between 2 January 1967 and 31 July 1970.
16. The Register of Common Land for this area records the registration as being undisputed. It is therefore logical to assume that there were no objections at the time to this registration and that the application was not referred to a Commons Commissioner as required for disputed applications under Section 5 of the Commons Registration Act 1965.
17. The local authority, Dorset County Council, appears not to have informed the legal owners of the Land of the registration made by Mrs Monica Killingback in 1968 although it would not have been a complicated matter for the local authority to establish the legal owners of the Land.
18. As a result, no objections were received to the registration of the Land as a common.
19. The Register of Common Land recorded the decision to register the Land as becoming final on 1 October 1970. This was recorded in an entry on the Lands Section of the Register dated 2 November 1971 (reference: 98/2).
20. It is important to note that the decision to record the Land on the Register of Common Land related to the ownership of the Land and not to the registration of rights of common over the Land. As stated at paragraph 19, the entry was recorded in the Lands Section. No corresponding entry was placed in the Rights section of the Register.

21. The Ownership Section of the Register also records a hearing convened in front of Chief Commons Commissioner, Mr G D Squibb, on 12 May 1972. The purpose of this hearing was to make inquiries into the ownership of the Land and not to determine rights of common over the Land. This is recorded at entry 1 of the Ownership Section of the Register of Common Land (Tab 1, page 10 of Exhibit MS1).
22. We submit that the entries on the Register of Common Land which relate to the Land would therefore have no effect upon this application by Mr Shakesby to deregister the Land as a common.

Rights of Common

23. The Register of Common Land does not record any registered rights of common over the Land. Any rights of this nature would be shown in the Rights section of the Register.
24. Rights of common must be registered within the relevant time set out by the Commons Registration Act 1967 or the Land Registration Acts 1925 and 1936. The relevant period is three years from the date of the commencement of the 1965 Act. This is set out in section 1(2) of the 1965 Act:

"After the end of such period, not being less than three years from the commencement of this Act, as the Minister may by order determine—

(a) no land capable of being registered under this Act shall be deemed to be common land or a town or village green unless it is so registered; and

(b) no rights of common shall be exercisable over any such land unless they are registered either under this Act or under the Land Registration Acts 1925 and 1936."

(Section 1(2) of the 1965 Act)

25. The effect of section 1(2) of the 1965 Act and the attendant statutory provisions is to render no rights of common exercisable over the Land if these have not been registered previously under the terms of the 1965 Act or the Land Registration Acts of 1925 and 1936.

26. There is no evidence to suggest that rights of common were registered under any of the above-mentioned Acts. Indeed, as stated above, no rights of common are recorded on the Register of Common Land.
27. Prior to his purchase of the Land in 1986, Mr Shakesby received a Certificate of Official Search (the "**Certificate**") dated 8 May 1986 from Dorset County Council. This was signed by P K Harvey on behalf of the registration authority and confirmed there to be no registered entries on the Register of Common Land with respect to the Land as at the date of the Certificate.
28. It was on the basis of this certification by Dorset County Council that Mr Shakesby made the decision to purchase the Land.

The 1957 Act

29. In 1957, the Winfrith Heath Act was passed by Parliament. The 1957 Act had the effect of extinguishing rights of common over areas of Winfrith Heath. The plan of the area over which commons rights were extinguished is appended to this Application (Tab 3, pages 14-15 of Exhibit MS1).
30. The Land was excluded from the area of land covered by the statutory plan appended to the 1957 Act. This appears to have been an omission or oversight made in error by the draftsman of this legislation. The Land is wholly separate from other areas of common land that were preserved by the 1957 Act. It therefore makes limited sense for rights of common to have been preserved over this small strip of land as it is isolated from and does not connect to any larger area of commons land.
31. The size and location of the Land suggests that it was previously used as a means of accessing the larger area of Knighton Heath to the north of the Land. The presence of a public footpath on the Land reinforces this impression. On 22 October 1950, Winfrith Parish Council made reference to this footpath as part of the Parish Council Survey and this information informed the preparation of subsequent legal definitive maps. We enclose at Tab 4, pages 16-17 of Exhibit MS1 copies of the map and survey notes which together formed the Parish Council Survey.
32. It is logical to assume that this footpath would have arisen as a means of enabling adjacent landowners to use the Land as an access route to the wider heath.

33. It is submitted that the Land should have been included within the area over which commons rights were extinguished and that it was only due to an oversight made by the legislative drafters of the 1957 Act that rights of common were retained over the Land.
34. If an omission has been made in the way outlined above with respect to this Land, it follows that Mrs Monica Killingback would not have had the authority to register the Land as common land when she made her application on 24 June 1968.

Designation of Land as a Common

35. In circumstances where rights of common were extinguished by the 1957 Act, it is logical to assume that it was the legislative intention to also remove the designation of these areas as common land. If this was not the case, areas of land would remain designated as common without any rights of common being exercisable over them. This would make limited practical sense.
36. If it is accepted that the 1957 Act should have included the Land, it follows that the registration of the Land as a common in 1968 was made on the basis of an administrative error and that it was never the legislative intention of the 1957 Act for the Land to be designated as a common.

Local assumption

37. The vesting deeds enacted by the Weld Estate from 1926 onwards and the conveyance transferring the freehold title of the Land to Mr Shakesby in 1986 make no mention of common land or manorial rights of any kind. The Weld Estate appear to have believed that any such rights had been extinguished prior to the date of this conveyance.
38. The local assumption at the relevant time the 1957 Act came into force appears to have been that the Land was no longer a part of the common.
39. Although this position was never officially ratified, it is difficult in practical terms to advance the opposite argument that such a small area of land was deliberately kept as common land when the greater extent of the land contained within Winfrith Common was relieved of all common rights.

No benefit to commoners

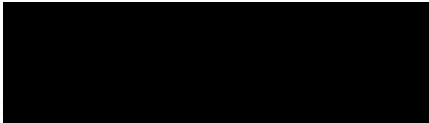
40. The fact that there are no rights of common currently registered over the Land and that no rights are eligible to be registered in the future means that no rights of common are exercisable by any individual over the Land. No benefit is therefore currently being enjoyed by any individual utilising their rights of common over the Land and the deregistration of the Land as a common is unlikely to be challenged by any interested person.
41. Furthermore, Mr Shakesby has not witnessed any person utilising rights of common over the Land during the period of his ownership of the Land.
42. By contrast, the registration of the Land as a common is detrimental to Mr Shakesby's use of the Land. The continued designation of the Land as a common is negatively impacting upon his freedom to utilise his Land as he would wish.
43. With the exception of replacement fencing, the designation of the Land as a common has also prevented Mr Shakesby from constructing fencing on the Land. In the absence of fencing, the Land is vulnerable to fly-tipping and to access by travellers.

Conclusion

44. The 1957 Act extinguished all rights of common over the relevant area of Winfrith Heath that was appended to the plan. It is logical to assume that the intention of the legislature was to also extinguish the designation of the land covered by the 1957 Act as a common.
45. The size of the Land and its remote location from any other areas of common suggests that the omission of this Land from the extinguishment of common rights imposed by the 1957 Act was an administrative oversight and unintentional omission.
46. It is submitted that the commons registration authority should now correct the register by removing entry 98 dated 28 June 1968 and entry 98.2 dated 2 November 1971 from the Land Section of the Register of Commons Land.

STATEMENT OF TRUTH

I believe the facts stated in these Submissions are true.



.....
Full Name MALCOLM LEONARD SHAKESBY.

27th JUNE 2022.....

Date