



Strategic Planning Committee

Date: Monday, 9 December 2019
Time: 11.00 am
Venue: Committee Room 1, County Hall, Dorchester, DT1 1XJ

Membership: (Quorum 6)

Robin Cook (Chairman), Shane Bartlett (Vice-Chairman), Alex Brenton, Kelvin Clayton, Jean Dunseith, Mike Dyer, David Gray, Sherry Jespersen, Mary Penfold, Belinda Ridout, David Tooke and John Worth

Chief Executive: Matt Prosser, South Walks House, South Walks Road, Dorchester, Dorset DT1 1UZ (Sat Nav DT1 1EE)

For more information about this agenda please telephone Democratic Services on 01305 or David Northover 01305 224175 - david.northover@dorsetcouncil.gov.uk



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A G E N D A

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1 APOLOGIES

To receive any apologies for absence.

2 DECLARATIONS OF INTEREST

To receive any declarations of interest.

3 MINUTES

3 - 10

To confirm the minutes of the meeting held on 23 September 2019.

4 PUBLIC PARTICIPATION

To receive questions or statements on the business of the committee from town and parish councils and members of the public.

TOWN GREEN APPLICATION

5 APPLICATION TO DEREGISTER LAND WITHIN THE CURTILAGE OF A BUILDING WRONGLY REGISTERED AS COMMON LAND AT CRENDELL, ALDERHOLT

11 - 24

To consider a report by the Corporate Director for Economic Growth and Infrastructure.

6 URGENT ITEMS

To consider any items of business which the Chairman has had prior notification and considers to be urgent pursuant to section 100B (4) b) of the Local Government Act 1972. The reason for the urgency shall be recorded in the minutes.



DORSET COUNCIL - STRATEGIC PLANNING COMMITTEE

MINUTES OF MEETING HELD ON MONDAY 23 SEPTEMBER 2019

Present: Cllrs Robin Cook, Shane Bartlett, Alex Brenton, Kelvin Clayton, Jean Dunseith, Mike Dyer, David Gray, Sherry Jespersen, Mary Penfold, Belinda Ridout and John Worth.

Apologies: Cllr David Tooke

Also present: Cllr David Walsh

Officers present (for all or part of the meeting):

Vanessa Penny (Definitive Map Team Manager) and Philip Crowther (Senior Solicitor - Planning), Carol McKay (Definitive Map Technical Officer) and David Northover (Senior Democratic Services Officer).

Public speakers

David Green, local resident
Dr Janet Davis, Rambler's Association
John Hoskin, tenant farmer
Peter Lacey, for applicant - The Duchy

1. Apologies

An apology for absence was received from Councillor David Tooke.

2. Declarations of Interest

No declarations of disclosable pecuniary interests were made at the meeting.

3. Public Participation

There were no statements or questions from Town and Parish Councils, nor public statements or questions at the meeting.

4. Terms of Reference

The Committee noted their Terms of Reference and what these entailed.

5. Application to divert Footpath 51, Dorchester and Footpath 6, Winterborne Monkton

An application to divert Footpath 51, Dorchester and Footpath 6, Winterborne Monkton - as shown on Drawing 18/20/1 of the officer's report - was considered by members, with particular emphasis being given to the

objections received in response to the formal consultation on the application, how these should be addressed, and how to proceed in light of the officer's recommendation that an Order be made.

Prior to the meeting, the Committee had visited the site of the application, to see at first hand what this proposal entailed and to have a more meaningful understanding of the material considerations, to help inform their decision.

With the aid of a visual presentation, the basis for the application and what it entailed was explained. Photographs and plans were shown to the Committee by way of illustration, showing how the footpath was being proposed to be diverted; its current characteristics and those associated with its setting within the landscape; the points

between which it ran; and the characteristics of the alternative diversion being proposed. Views from various points along the length of the current route and the proposed diversion - showing its topography; its relationship with the neighbouring town development - were drawn to the attention of the Committee.

The main reason for the application being made was on public safety grounds: so that it would not be necessary to cross the A35, as those using the route currently had to. The footpath crossed land owned by the Duchy, with the proposed diversion also being beneficial to the affected landowner and its tenant farmer.

Public consultation in 2018 had resulted in four objections - Councillor Roland Tarr (the local Ward member for Winterborne and Broadmayne); a local resident; the Ramblers Association; and the Open Spaces Society, primarily on the basis that public enjoyment of the route would be diminished and that it was less convenient and attractive due to the extended length and route of what was being proposed. Other concerns expressed related to its character; proximity to the bypass and route through a business park; number of gates; its width and surfacing.

Whilst the objections had been considered on their merit, officer's confirmed that their view was that the proposed diversion met the statutory legal tests for both Order making and Order confirmation under Section 119 of the Highways Act 1980. Officers clarified what those tests constituted:-

- That it was in the interests of both the landowner and the public, in that public safety would be considerably improved by the diversion, benefitting from the utilisation of an already established underpass, so avoiding the need to cross the A35. The safety improvements for the public using the footpath were considered to be substantial, given that the current route was seen to pose a danger owing to the speed and volume of traffic at the point at which it crossed the road.
- Officers were satisfied that the diversion was in the interest of the landowner as it improved land management, given that the new route would no longer need to interact or interfere with those agricultural activities taking place.
- The new termination points of the footpath maintained their connection with the same, or connected, public highways and were substantially as convenient to the public.

- The proposed new route had been available on a permissive basis for several years and was already well used. Although the proposed route was longer than the current route, this was more than outweighed by the safer crossing of the A35 and the provision of a shallower gradient which was accessible to all users. The diverted route was therefore not substantially less convenient to the public.
- The diverted route largely retained access to farmland and views to the south, especially of Maiden Castle, maintaining public enjoyment of the route. Therefore the diversion would have no adverse effect on the enjoyment by the public of the route as a whole and would be beneficial to land currently served by the path.
- There were several gates along the path which were to be rationalised, with only three needing to be retained for safety reasons.
- The width of the new route met Dorset Council's recommended minimum width for new footpaths, which was 2 metres, allowing for two people or two wheelchairs to pass unobstructed.
- Before any Order was confirmed, new route will be inspected and certified by Dorset Council with any issues regarding the surfacing or drainage which needed attention being resolved before Order confirmation.
- The proposed diversion affected only the applicant's land and therefore no compensation was necessary under section 28 of the Highways Act 1980.
- The proposed diversion accorded with the principles and provisions of the Council's adopted Rights of Way Improvement Plan (ROWIP).

Officers confirmed that the proposed diversion would have no effect on the enjoyment by the public of the route as a whole and was expedient in the interests of the landowners and public safety. Their recommendation was being made on that basis.

Support for the application had been received from the tenant farmer as it benefited his land management; Dorchester Town Council; Highways England, as it reduced risk and was a safety improvement, with the local Ward member for Dorchester Poundbury, Councillor Richard Biggs, not raising any objection to the diversion. The application was also supported by one of the Ward members for Dorchester West, Councillor Les Fry, believing it would improve public safety and accessibility.

Public Participation

David Green was given the opportunity to address the Committee but considered that he had nothing further to add to that which he had heard.

Dr Janet Davis on behalf of the Ramblers Association, considered the proposed new route to be deficient in what it was offering, on the grounds that part of it was now to run parallel to the A35, raising concerns of a potential conflict with traffic in the event of an incident as no safety barriers were being proposed; increased noise nuisance and exposure to traffic fumes. Whilst these concerns were enough, given that part of the route was now to run through an industrial estate, she considered this alone failed one of the legal tests, as it significantly reduced public enjoyment. The Ramblers had suggested an alternative route which would avoid these issues and, on that basis, she considered the application should be refused.

John Hoskin, the tenant farmer, considered that the application should be approved on the basis that it would considerably improve land management and his ability to work the land in a more effective way. He could see no reason why the hedgerow at the western end of the route could not be kept well trimmed, or removed altogether if necessary, given that it was of little ecological or practical value, so as to maintain good views. Whilst supporting the application, he asked that consideration be given to the retention of all of the gates that were due to be removed, so as to aid the

effective management of livestock as necessary, with these being kept open in the main but able to be closed, on occasion, to facilitate livestock crossing. Subject to this, he asked members to approve the application.

Peter Lacey, representing the applicant - the Duchy - , considered that the diversion would improve public safety considerably, in not having to cross the A35; would facilitate more effective land management for the farmer including reducing sheep worrying and dog fouling; and was readily deliverable with the already existent underpass available for use. This was currently available on a permissive basis, but being dedicated a right of way would formalise this arrangement. He confirmed that the application complied with the ROWIP in addressing and improving road safety and making practical improvements and that this safer, more accessible route, should be welcomed.

Drawn to the attention of the Committee was the view of the Ward member for Winterborne and Broadmayne, Councillor Roland Tarr – as appended to these minutes, along with the officer's response. He was concerned that the application would not address the issue of how cycling could be better promoted and encouraged, given that this would not be permissible on any new route. Given discussion about this was currently ongoing with the Duchy, he asked that, at the very least, the issue be deferred pending more dialogue in this regard. Officer's response addressed the issues raised and what could be done to achieve cycling provision improvements.

The Committee were then provided with the opportunity to ask questions of the officer's presentation and what they had heard from invited speakers, with officers providing clarification in respect of the points raised.

In particular, consideration could well be given to the retention of the gates to aid livestock management on the basis of the request by the tenant farmer and that, where practicable, the hedgerows be managed so that southern views currently enjoyed were retained as far as they might be. In response to the possibility that vegetation be trimmed at the approaches to the underpass, officers confirmed that the Council's Ranger service, in conjunction with the farmer, could manage this as necessary.

As to the safety aspect of that part of the route running parallel with the A35, officers confirmed that Highways England had seen no reason to believe this would be an issue and did not necessitate barriers being installed. Moreover, regarding the alternative route proposed by the Ramblers, officers confirmed that was a significantly longer distance and, along with where their proposed termination point was to be, was seen as less convenient to the user. The Senior Solicitor clarified though that what the Committee were being asked to consider was the application as it stood, and that any alternative suggestion could not be taken into account.

As observed by one member on the site visit, any perception that the permissive route as it stood was seen to be uninviting would be rectified so as to ensure it complied with necessary regulations governing rights of way. The Vice-Chairman also considered that thought be given to the possibility of solar illumination of the underpass, if at all practicable.

Officers considered that given all of this, now satisfactorily addressed what concerns there had been so, on that basis, were recommending that permission be granted for the approval of the application.

Having had an opportunity to consider the merits of the application; having understood why the application was necessary; having taken into account the officer's report, what they had heard at the meeting from the case officer; legal advisor, and those invited speakers - notwithstanding the views of the Ward Member for Winterborne and Broadmayne – the Committee were satisfied in their understanding of what the application entailed and that the necessary statutory tests had been met. On that basis, and on condition that the issues raised about the gating and vegetation were taken into account - on being put to the vote - the Committee agreed unanimously that the application should be approved on the basis of the recommendation contained in the officer's report, and having regard to the provisions of the Update Sheet, and how the gating and vegetation would be managed.

Resolved

1) That the application to divert Footpath 51, Dorchester and Footpath 6, Winterborne Monkton from A – B – B1 – C to D – E – F – G – H – I – J – K – L – M – N – O – O1 – P – Q – R be accepted and an Order made subject to the following provisos:-

- a) That the hedge alongside the proposed new route O1 – P be either removed or cut back to the height of the fence before the Order comes into effect;
- b) That new latch posts be installed for the 4 pedestrian gates at O and O1 (so that they can be locked open except when livestock are being moved across the footpath) before the Order comes into effect;
- c) If the Order is confirmed, that the vegetation either side of the underpass be regularly inspected by the Council's Ranger Team and the area is kept as open as possible.

2) That the Order include provisions to modify the definitive map and statement to record the changes made as a consequence of the diversion; and

3) If the Order is unopposed, or if any objections to the Order are of a similar nature to those already considered by the Committee, it be confirmed by the Council or submitted to the Secretary of State without further reference to the Committee.

Reasons for Decisions

The proposed diversion met the legal criteria set out in the Highways Act 1980.

The inclusion of these provisions in a public path order meant that there was no need for a separate legal event order to modify the definitive map and statement as a result of the diversion.

Accordingly, the absence of objections might be taken as acceptance that the proposed new routes were expedient and therefore Dorset Council could itself confirm the Order.

In the event that objections of a similar nature to those already considered were received to the pre-Order consultation, the Order should be submitted to the Secretary of State for confirmation without further reference to the Strategic Planning Committee.

Before confirming a public path creation, diversion or extinguishment order, a council or the Secretary of State must have regard to any material provision of a rights of way improvement plan prepared by the local highway authority. Dorset's Rights of Way Improvement Plan sets out a strategy for improving its network of Public Rights of Way, wider access and outdoor public space.

6. Urgent items

There were no Urgent Items necessary for consideration.

7. **Update Sheet**

Update Sheet

Rights of Way Application

Application Ref.	Application address	Agenda ref.	Page no.
-	Application to divert Footpath 51, Dorchester and Footpath 6, Winterborne Monkton	5	5 onwards
<p>Receipt of views from Councillor Roland Tarr - Winterborne and Broadmayne Ward member</p> <p>“Thank you for your invitation to this meeting, received by us, as Ward Councillors.</p> <p>The Mayor of Dorchester, Ward Member for Poundbury, and I, are in Bayeux, Dorchester’s Partner Town, at the invitation of the Mayor of Bayeux, from this Friday. On Monday morning we shall be laying wreaths by the graves of those local people who died during the recapture of the town by the Dorset Regiment at the end of the last war.</p> <p>We both wish to send our apologies but should be grateful if our views could be read to the committee at a suitable time during the meeting.</p> <p>The future of non-motorised access from the villages around Dorchester for children who come to our schools in the town as well as those who work in the town and commute from those villages is a very topical, and we are currently in discussion with the Duchy about this.</p> <p>I taught at Hardyes for ten years, and students from the villages were unable to join in with many of the after-school activities which are organised for them - sporting, extra catch-up classes for exams, drama and music for example, because there has never been any safe usable cycling provision for returning after the school buses leave at 3.45pm.</p> <p>Likewise, by way of example, hospital staff who like to cycle to work from the villages west of Poundbury either have to cycle through a filthy farmyard and dismount to open multiple gates or brave a very nasty roundabout across a fast and heavily trafficked trunk road.</p> <p>As a council we should surely be planning to resolve these problems by discussion, and not closing existing rights of way without looking at the overall situation.</p>			

The two Ward Councillors would therefor ask the Strategic Planning Committee to familiarise themselves with the new path and old on Monday, but defer a final decision until further discussions have been held with the Duchy, and the tenants, who have recently indicated a wish to discuss possible mutually beneficial solutions.

I should also mention that local walkers park near the western, Monkeys Jump, end of this path for short early morning and evening walks on their way to and from work and enjoy the superb views of Maiden Castle which it affords.

I realise that the closure of this path may seem irrelevant to the general problem of lack of access for our rural population, as described above, but if it is humanly possible my preference would be for a decision on the footpath closure by our Strategic Planning Committee to be deferred pending further discussions between the Duchy , the tenants and the very new Dorset Council.

If we are as a Council to aim to meet our current Green commitments I believe a strategic approach to those problems and opportunities is vital.

Yours

Roland”

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Officer’s response - Carol McKay - to Cllr Tarr’s email of 17 September 2019:-

“The issues raised by Cllr Tarr are applicable to the wider matter of provision for cyclists and walkers in the Poundbury / Dorchester area and these matters cannot be considered under the legal tests for Public Path Diversion Orders. However a decision on the footpath diversion does not prejudice the outcome of any future talks with the Duchy regarding public access.

The proposed diversion concerns public footpaths and provides a new route for walkers only (this includes mobility scooters etc).

Cyclists will not be permitted on the proposed new route. There is no legal obligation for a landowner to upgrade a diverted footpath to bridleway.

Although cycling provision is not relevant to the proposed footpath diversion, Dorset Council officers are happy to enter into discussions with the Duchy to improve public access in the area. “

19/09/2019

Duration of meeting: 11.30 am - 12.50 pm

Chairman

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Application to deregister land within the curtilage of a building wrongly registered as common land at Crendell, Alderholt

Date of Meeting: 9 December 2019

Lead Member: Cllr David Tooke, Dorset Council member for Cranborne and Alderholt

Lead Officer: Matthew Piles, Corporate Director for Economic Growth and Infrastructure

Executive Summary: This report considers an application to deregister land within the curtilage of a building said to be wrongly registered as common land at Crendell, Alderholt as shown on Drawing 19/19 attached as Appendix 1.

Equalities Impact Assessment: An Equalities Impact Assessment is not a material consideration in considering this application

Budget: A decision whether or not to accept the application to deregister the identified area as common land may result in a challenge through the Courts by way of judicial review

Risk Assessment: As the subject matter of this report is the determination of a Common Land deregistration application the Council's approved Risk Assessment Methodology has not been applied.

Other Implications: None

Recommendations:

That:

- (a) The application CLD 2018/1 to deregister land within the curtilage of a building wrongly registered as common land at Crendell, Alderholt is accepted; and
- (b) The Register of Common Land be updated accordingly as shown on Drawing 19/19.

Reasons for Recommendation:

- (a) The proposed deregistration meets the legal criteria set out in the Commons Act 2006.
- (b) The evidence presented to the Council demonstrates that application CLD 2018/1 should be accepted and the relevant land deregistered as Common Land.

Appendices:

- 1. Drawing 19/19
- 2. Commons Registration Plan extract
- 3. - Aerial photograph 1972
- Google Street View photograph 2009
- 4. Extract from Mortgage Deed 1957

Background Papers:

The file of the Executive Director, Place (ref. CLD 2018/1).

Officer Contact

Name: Vanessa Penny, Definitive Map Team Manager

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Email: vanessa.penny@dorsetcouncil.gov.uk

1 Background

- 1.1 The registers of common land (and town and village greens) were first prepared under the Commons Registration Act 1965 and continue to be maintained by Commons Registration Authorities. Dorset Council is the Commons Registration Authority (CRA) for Dorset.
- 1.2 In some cases, the original applications to register land included maps that were either difficult to interpret or incorrectly defined the boundary of the land. Consequently, some land registered under the 1965 Act was wrongly registered as common land or town or village green. Paragraphs 6 to 9 of Schedule 2 to the Commons Act 2006 enables applications to be made to deregister certain types of land and buildings that were wrongly registered as either common land or town or village green. Dorset Council has a duty to consider these applications.
- 1.3 Paragraph 6 of Schedule 2 to the 2006 Act enables the deregistration of land which is and has been covered by a building or the curtilage of a building ever since the land was registered under the 1965 Act. Typically, such land may include cottages or gardens on or abutting the common. It does not matter whether the building or curtilage was lawfully present on the land when it was provisionally registered under the 1965 Act. Neither is it necessary for the land to have been covered by the same building throughout the period since the date of provisional registration.
- 1.4 The onus of proof is on the applicant to prove each of the elements of the tests arising under each of these paragraphs on the balance of probabilities.
- 1.5 Dorset Council has received an application to deregister land within the curtilage of a building said to be wrongly registered as common land at Crendell, Alderholt as shown on Drawing 19/19 attached as Appendix 1.

2 Law

2.1 Commons Act 2006 Schedule 2:

Buildings registered as common land

6(1) If a commons registration authority is satisfied that any land registered as common land is land to which this paragraph applies, the authority shall, subject to this paragraph, remove that land from its register of common land.

6(2) This paragraph applies to land where—

- (a) the land was provisionally registered as common land under section 4 of the 1965 Act;

(b) on the date of the provisional registration the land was covered by a building or was within the curtilage of a building;

(c) the provisional registration became final; and

(d) since the date of the provisional registration the land has at all times been, and still is, covered by a building or within the curtilage of a building.

6(3) A commons registration authority may only remove land under subparagraph (1) acting on—

(a) the application of any person made before such date as regulations may specify; or

(b) a proposal made and published by the authority before such date as regulations may specify.

2.2 Curtilage

The word ‘curtilage’ is not defined in the 2006 Act (or in other legislation) but has been considered by the courts in various contexts, in particular in the context of planning and development legislation. From such cases, it appears that the question of whether land is considered to be within the curtilage of a building is a question of fact and degree. Key factors to be taken into account are the physical layout of the land and buildings, past and present ownership and past and present use and function with more recent Court decisions appearing to place more weight on present use and function than common ownership. Examples of land which could fall within the curtilage of a building include a yard, basement area, passageway, driveway and garden which are ancillary to the house.

3 Current Registration Details

- 3.1 The common land (Register Unit No. CL127) forms part of the Cranborne Estate and was registered following an application made by the Marquess of Salisbury on 8 July 1968. The common, known as “Wastelands”, is a tract of about 33.7 acres and consist of various parcels of land around Crendell. An extract from the plan accompanying the register entry is included in Appendix 2.
- 3.2 The common was provisionally registered on 23 September 1968 and the registration became final on 30 January 1981.

4 General Issues

- 4.1 The deregistration application was publicised in accordance with the Regulations. Advertisements on site and on the Council's website invited objections to the application within the period specified in the Regulations: in this case the objection period expired on 27 September 2019. One objection to the application was received within the specified time. Another objection was received after the expiration of the objection period. The objections are summarised in paragraph 6 below, and full copies are available on the case file. Representation was also received from the owner of the remainder of the Common who stated that they have no objection to the deregistration.
- 4.2 In its capacity as Registration Authority, the Council is required to adjudicate on the application and to deregister the application land if there are sound reasons for doing so or, if not, to reject the application. It is for the applicant to prove their case and there is no requirement for the Registration Authority to instigate its own research into the application. Nonetheless, there may be disputes of fact and/or issues of law to be resolved or considered before a decision can properly be made. Further, the Council has discretion to deal with the application on the basis of the evidence available to it and not necessarily solely on the basis applied for.

5 The application

- 5.1 The application states that the land should be deregistered as common land because it ought not to have been registered due to the fact that it was covered by a building or was within the curtilage of a building at the time of registration. The application was dated 4 January 2018 and was duly made for the purposes of the Commons Act 2006.
- 5.2 The application was accompanied by supporting documentary evidence:
- (a) Notice of planning permission to construct a bungalow dated 17 September 1956.
 - (b) Conveyance of the land affected by this application dated 16 July 1957 between Viscount Cranborne and Mr Lockyer. The plan accompanying the conveyance shows a building present on the site.
 - (c) Certificate of marriage between Mr Lockyer and Miss Harrington.
 - (d) Death certificate for Mrs Lockyer
 - (e) Grant of probate for Mr Lockyer
 - (f) Copy of register of title to the land dated 5 May 2017.

6 Objections to the application

- 6.1 One objection was received during the consultation period. The objector raised concerns that the largest building on the site was recently demolished and replaced by a new building. Therefore, the application is invalid in terms of the requirement that the land "...has at all times been, and still is, covered by a building...". It is suggested that the Council must be ready to accept evidence relating to the land until the end of the consultation period, therefore, the relevant date as it relates to that requirement must be the date of determination by the Council and cannot be the date of the application.

Officers' comments:

- (a) The solicitor for the applicants has advised that the original bungalow was demolished in April 2018 and immediately replaced with a new house in the same location.
- (b) Defra guidance to applicants states that the "application will need to show all of the following:
- (i) the land was provisionally registered between 2 January 1967 and 31 July 1970; you can check this in the commons registers
 - (ii) the land was covered by a building, or within the curtilage of building, when it was provisionally registered
 - (iii) the land is still covered by a building or within the curtilage of a building when you apply"

Officers consider that the Defra guidance is correct and that otherwise an applicant could be prejudiced by delays in determining an application. It is therefore considered that the relevant date in relation to paragraph 6(2)d of the Act is the date of the application, not the date of determination by the authority. As such, the requirement was met at the time of the application.

Even if that is wrong, officers consider that the period between demolition of the previous building and construction of the new building is so short that it is de minimis for the purposes of the statutory test.

- 6.2 The objector also supplied copies of two Ordnance Survey maps. One is a six-inch map dated 1963 and the other is at a scale of 1:10000 and is dated 1994. Neither of the maps show a building on the application land.

Officers' comments:

- (a) Ordnance Survey maps at these scales often do not show smaller features such as single dwellings. The absence of a feature on the maps does not necessarily mean that no structure was present on the ground at the time the map was published.

- (b) There is no evidence to suggest that the bungalow was not constructed in accordance with the planning permission granted in 1956.
 - (c) The plan accompanying the conveyance document dated 1957 indicates the presence of a building on the land at that time. A Schedule attached to a Mortgage Deed dated 1957 (see Appendix 4) refers to a bungalow being erected at the time.
 - (d) Aerial photographs dated 1972 (Appendix 3) and 1997 clearly show a building in the position indicated on the application plan. Google Street View photographs dated 2009 (Appendix 3) and 2011 show a bungalow present on the site.
- 6.3 The second objection (received after the specified date) raises a concern that there is insufficient evidence that the bungalow was actually constructed before the date of provisional registration. The objector also states that the legal requirements should be applied at the date of determination, not the date of the application.

Officers' comments:

These issues are discussed above.

7 Additional evidence provided by the applicants

In a letter responding to the objections, the applicants made the following comments (full response available on the case file):

- 7.1 The requirement that “the land has at all times been covered by a building...” relates to the date of the application as confirmed by Government guidance [see paragraph 6.1(b) above] and also the Commons Registration (England) Regulations 2014 Schedule 4 paragraph 14(6) which states that “An application...must include evidence of the application of the appropriate paragraph...to the land to which the application relates”. The fact that there was a period of time after the application was made when there was no building on the land is therefore not relevant.
- 7.2 The building regulations approval and the planning permission for the dwelling pre-date the provisional registration by some years. The land was purchased from Viscount Cranborne in July 1957 as evidenced by a Conveyance document. The Schedule to a Mortgage Deed dated 10 September 1957 refers to the land comprised in the 1957 Conveyance “Together with the bungalow in course of erection thereon”.
- 7.3 The four requirements set out in paragraph 6(2) of Schedule 2 to the 2006 Act were met on the date of the application:

- (a) The land was provisionally registered under the 1965 Act on 23 September 1968.
- (b) On the date of provisional registration, the land was covered by a building or was within the curtilage of a building. The Mortgage Deed shows that the building was in the course of construction in 1957.
- (c) The provisional registration became final on 31 January 1981.
- (d) Since the date of provisional registration, the land has at all times been, and still is, covered by a building or within the curtilage of a building. This requirement refers to the date the application was made. Planning permission dated 19 February 2018 granted permission for the demolition of the bungalow. If the property had been demolished between September 1968 and January 2018, planning permission would have been required and the Council's records will show that no such permission was granted.

Therefore, it is the applicants' view that all four requirements have been fulfilled.

8 Discussion

- 8.1 It is the applicants' case that rights were registered that should not have been. At the time of registration of the Common an Ordnance Survey map at a scale of 1:10560 was used which, in probability, failed to accurately record features that were on the ground at the time of application for registration in 1968.
- 8.2 The land in question formed part of the Cranborne Estate. The remainder of the common is still in the Estate's possession. The application land was conveyed to Mr Lockyer by the Estate in 1957. The same area of land became registered as common land following an application by the Estate made in 1968. This suggests that an error was made at the time of provisional registration.
- 8.3 Officers consider that on the balance of probabilities the building was in place at the time of registration even though it was not recorded on the base map used for the Commons Register.
- 8.4 For the application to deregister common land to be successful it must be demonstrated that any features which should not have been registered have been in place (or something else on their footprint) since that time.

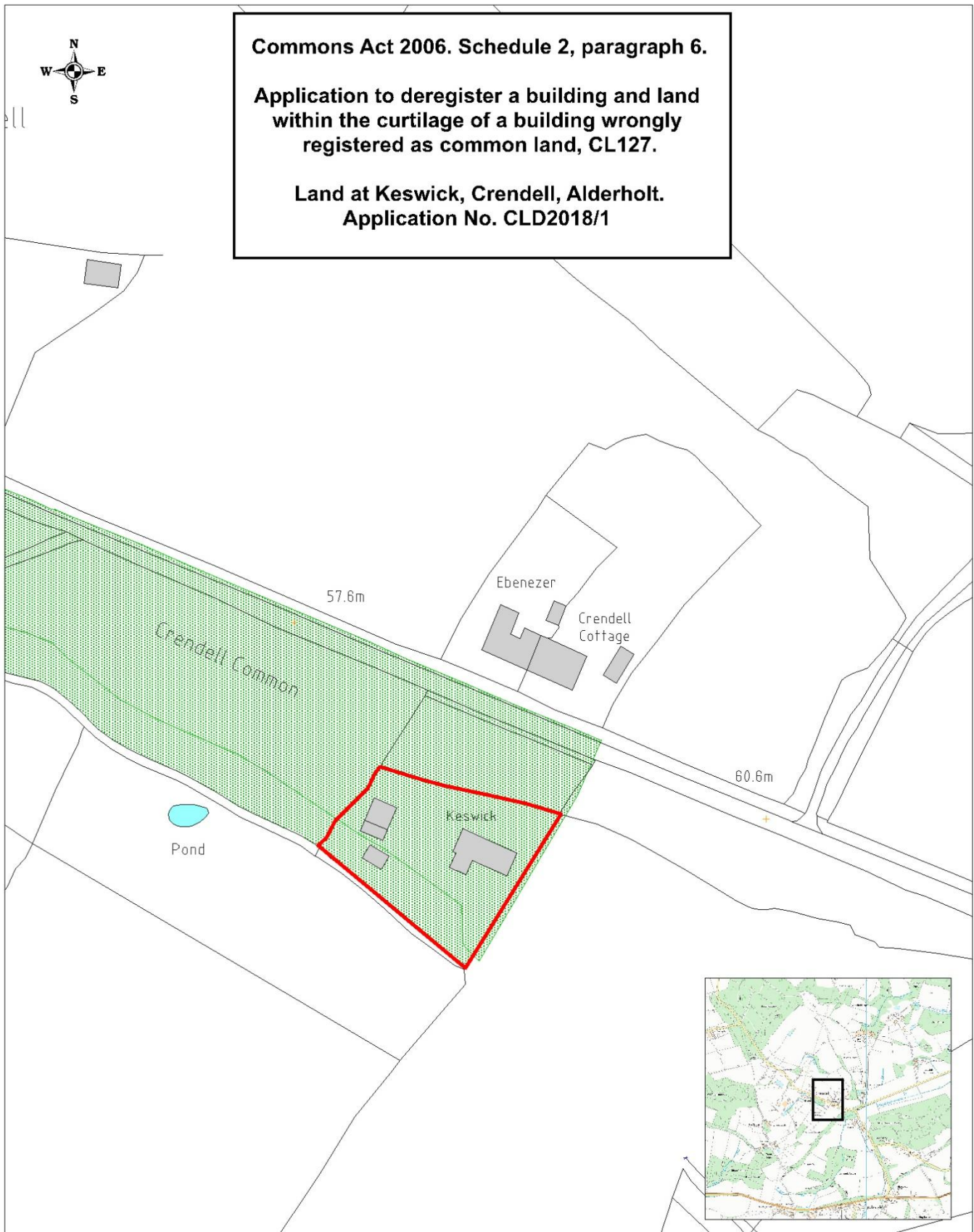
9 Conclusions

- 9.1 It is necessary for members to consider whether the application satisfies the statutory requirements to deregister land as common land. The applicant must prove that the requirements are met on the balance of probabilities.
- 9.2 The evidence provided in support of the application, including the conveyance document, the planning permission for the building and the Mortgage Deed, indicates that the land was covered by a building at the time of provisional registration and continued to be so at the time of the application.
- 9.3 In the event that members consider that the relevant date for consideration is the date of determination and not the date of the application, officers consider that the length of time that there was no building present on the land is de minimis in terms of the Commons Act test.
- 9.4 The application is valid and when considered together with all the available evidence, it is recommended that application CLD 2018/1 is accepted.
- 9.5 Accordingly, the Register of Common Land should be amended to remove that area of land as shown edged red on Drawing 19/19 (attached as Appendix 1) from entry CL127 relating to Wastelands.

Matthew Piles

Corporate Director for Economic Growth and Infrastructure

November 2019

**KEY:**

Area of land which is the subject of this application is shown by a red outline

Registered Common land is shaded green



Ref: 19/19

Date: 05/08/2019

Scale 1:1250

Drawn By: VP

Cent X: 408689

Cent Y: 113192



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Aerial Photography © LHPerspectives 2002 & © Getmapping 2005, 2009 & 2014
Getmapping Pte and Bluesky International Limited [2017]

Commons Register Plan extract

Application No. 307

Register Unit No. CL 127

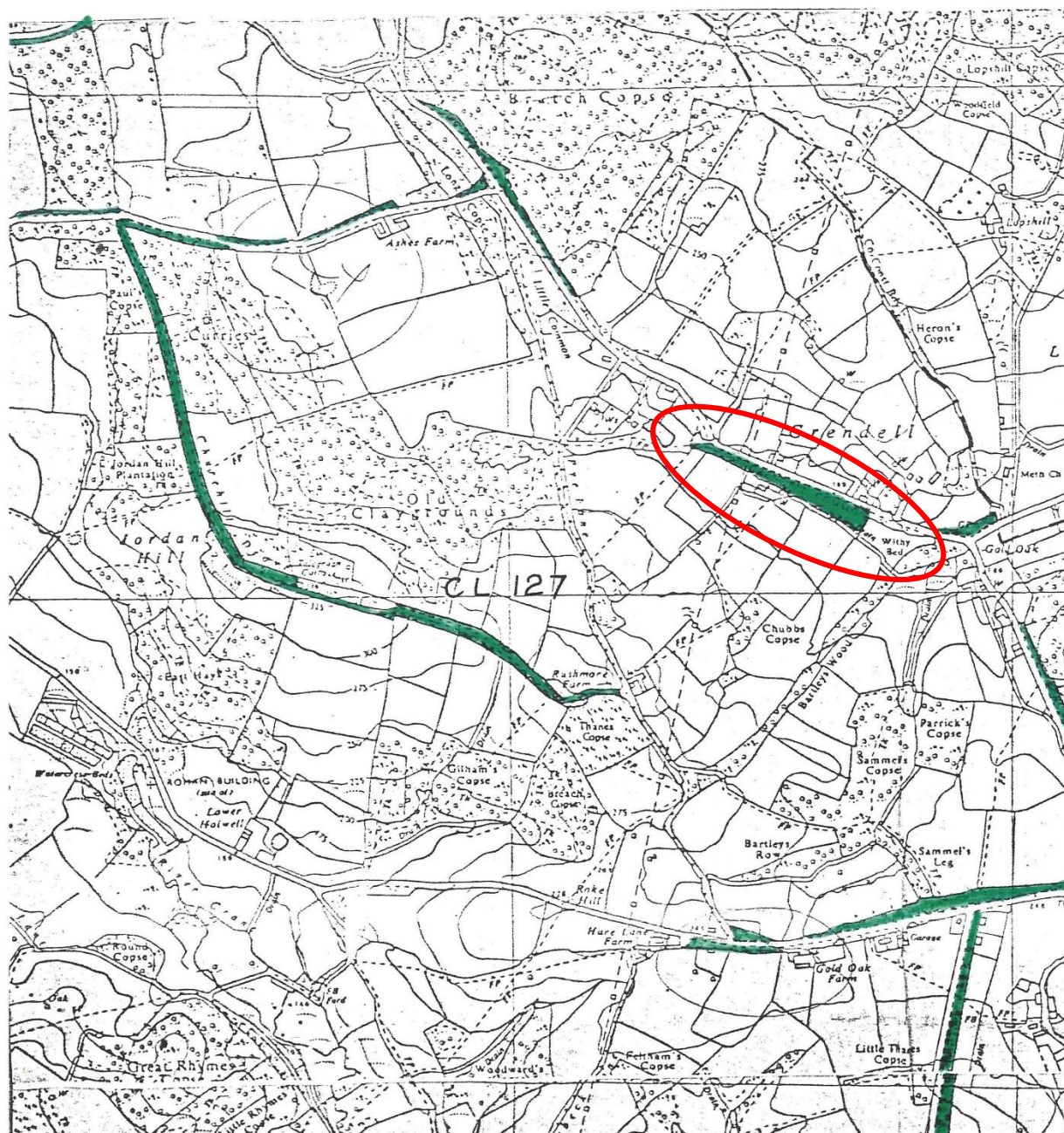
THE COMMONS REGISTRATION ACT 1965

PROVISIONAL REGISTRATION

DORSET COUNTY COUNCIL

PARISH OF Cranborne & Alderholt.

920912



Aerial Photograph 1972



Google Street View photograph 2009



Extract from Mortgage Deed 1957

LM11

WE CERTIFY THAT THIS IS A TRUE COPY
OF THE ORIGINAL

Dixon Templeton 24/11/2019
DIXON & TEMPLETON LLP SOLICITORS
43 HIGH STREET FORDINGBRIDGE SP6 1AU



This Mortgage Deed

is made the

Tenth day of *September*
one thousand nine hundred and fifty-seven BETWEEN
CLIFFORD GEORGE LOCKYER of Crendall Alderholt in the County
of Dorset Storeman-Driver and BETTY MAY HERRINGTON of 1,
Lower Groves Whitsbury near Fordingbridge in the County of
Hants Spinster

a member of The Halifax Building Society (hereinafter called "the Mortgagor") of the
one _____ part

and the said THE HALIFAX BUILDING SOCIETY incorporated under the Building Societies
Act 1874 (hereinafter called "the Society") of the other _____ part

WHEREAS the Mortgagor is the owner of the legal estate in the freehold
property hereby mortgaged free from
incumbrances and has applied to
the Society for an advance of SIX HUNDRED POUNDS

(being
the amount to which he is entitled according to the Rules in respect of six shares
held by him therein) and the Society has accordingly agreed to advance to the Mortgagor the said
sum of SIX HUNDRED POUNDS

upon having the repayment of combined principal and interest thereon secured in manner
hereinafter appearing

but so that the moneys for the time being outstanding may be called in by the Society on six
months notice

**THE SCHEDULE
THE MORTGAGED PROPERTY**

ALL THAT piece or parcel of land forming part of the Viscount Cranborne Estate situate at Gold Oak Crendall in the County of Dorset which said piece or parcel of land is for the purpose of identification only more particularly delineated and described on the plan endorsed on a Conveyance dated the Sixteenth day of July 1957 and made between The Right Honourable Robert Edward Peter Cecil of the one part Clifford George Lockyer and Betty May Herrington of the other part and thereon coloured red Together with the bungalow in course of erection thereon or on some part thereof _____

SIGNED SEALED AND DELIVERED
by the said CLIFFORD GEORGE
LOCKYER in the presence of:-

C G Lockyer

Frank Menbury
Mr. Messrs. A. W. R. Chas. Thomas
Stationers, Farnham
Wokingham, Berks.

SIGNED SEALED AND DELIVERED
by the said BETTY MAY HERRINGTON
in the presence of:-

B. M. Herrington.

Frank Menbury