



Strategic and Technical Planning Committee

Date: Monday, 16 October 2023
Time: 10.00 am
Venue: Council Chamber, County Hall, Dorchester, DT1 1XJ

Members (Quorum 6)

Robin Cook (Chairman), John Worth (Vice-Chairman), Shane Bartlett, Dave Bolwell, Alex Brenton, Kelvin Clayton, Toni Coombs, Jean Dunseith, Sherry Jespersen, Mary Penfold, Belinda Ridout and David Tooke

Chief Executive: Matt Prosser, County Hall, Dorchester, Dorset DT1 1XJ

For more information about this agenda please contact Democratic Services Meeting Contact 01305 224202 - elaine.tibble@dorsetcouncil.gov.uk

Members of the public are welcome to attend this meeting, apart from any items listed in the exempt part of this agenda.

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Agenda

Item		Pages
1.	APOLOGIES	
	To receive any apologies for absence.	
2.	MINUTES	3 - 14
	To confirm the minutes of the meeting held on 26 July 2023.	
3.	DECLARATIONS OF INTEREST	
	To disclose any pecuniary, other registrable or non-registrable interests as set out in the adopted Code of Conduct. In making their disclosure councillors are asked to state the agenda item, the nature of the interest and any action they propose to take as part of their declaration.	

If required, further advice should be sought from the Monitoring Officer in advance of the meeting.

4. REGISTRATION FOR PUBLIC SPEAKING AND STATEMENTS

Members of the public wishing to speak to the Committee on a planning application should notify the Democratic Services Officer listed on the front of this agenda. This must be done no later than two clear working days before the meeting. Please refer to the Guide to Public Speaking at Planning Committee. [Guide to Public Speaking at Planning Committee](#)

The deadline for notifying a request to speak is 8.30am Thursday 12 October 2023.

5. APPLICATION TO CORRECT THE COMMONS REGISTER BY REMOVING LAND REGISTERED AS COMMON LAND AT KNIGHTON COMMON, WINFRITH NEWBURGH

15 - 52

This report considers an application to correct Dorset Council's Register of Common Land by removing land registered at Knighton Common, Winfrith Newburgh under Section 19(2)(a) of the Commons Act 2006 and recommends rejection on the basis that insufficient evidence has been submitted in support of the application.

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.

7. EXEMPT BUSINESS

To move the exclusion of the press and the public for the following item in view of the likely disclosure of exempt information within the meaning of paragraph 3 of schedule 12 A to the Local Government Act 1972 (as amended). The public and the press will be asked to leave the meeting whilst the item of business is considered.

There are no exempt items scheduled for this meeting.



STRATEGIC AND TECHNICAL PLANNING COMMITTEE

MINUTES OF MEETING HELD ON WEDNESDAY 26 JULY 2023

Present: Cllrs Robin Cook (Chairman), John Worth (Vice-Chairman), Shane Bartlett, Alex Brenton, Kelvin Clayton (Left the meeting at 12.45), Toni Coombs, Jean Dunseith (Left the meeting at 12:45), Mary Penfold, Belinda Ridout and David Tooke

Apologies: Cllrs Dave Bolwell and Sherry Jespersen

Cabinet Leads in attendance: Cllr David Walsh

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

Philip Crowther (Legal Business Partner - Regulatory), Mike Garrity (Head of Planning), Vanessa Penny (Definitive Map Team Manager), Hannah Smith (Development Management Area Manager (North)), Elaine Tibble (Senior Democratic Services Officer), Carol McKay (Senior Definitive Map Technical Officer), Penny Canning (Lead Project Officer), Russell Goff (Senior Ranger) and Alister Trendell (Project Engineer)

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

Steve Savage (Transport Development Liaison Manager)

6. Minutes

The minutes of the meeting held on 19 June 2023 were confirmed and signed.

The Development Management Area Manager (N) presented an update for a slight variation to conditions agreed at the meeting of 4 November which were omitted on the published decision sheet attached to the minutes of that meeting. A copy is attached to these minutes for information.

Decision: that the amendment be approved.

7. Declarations of Interest

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

8. Planning Applications

Application No: P/FUL/2021/01018 - North Dairy Farm Access To North Dairy Farm Pulham Dorset DT2 7EA

- a) The Development Management Area Manager (N) presented the report for an application to install ground-mounted solar panel photovoltaic solar

arrays, substation, inverter stations, transformer stations, security fencing, gates and CCTV; form vehicular access, internal access track, landscaping and other ancillary infrastructure.

The application had been brought to the Strategic and Technical Planning Committee at the request of the Service Manager due to the scale of the proposed development and the judgement required in considering whether the public benefits of the scheme outweighed the harm to the setting of the Dorset Area of Outstanding Natural Beauty (AONB). The application had been the subject of a committee site visit on 14 June 2023.

Cllr Tooke elected not to participate in the application as he had been unable to attend the site visit on 14 June 23.

The context and plan of the site was detailed with the aid of a visual presentation, together with ancillary structures.

With the aid of a visual presentation, the Development Management Area Manager (N) highlighted the relevant restraints of the application, including heritage assets, the key planning considerations, the principle of development and the significant public benefits. The development, if approved would power 11,745 homes over a 35 year lifespan.

The main planning considerations were flood risks, a flood risk sequential test had been applied and having checked alternative potential sites in the Dorset Council area, officers were satisfied that the sequential test had been passed.

Members were advised that the solar arrays would not impede flood plain storage and following construction there would be no staff working permanently on the site. No objections had been raised by the Lead Local Flood Authority.

Historic England had made no comments, or given further advice regarding the Scheduled Monuments, officers considered that there was no harm to the designated assets and scheduled monuments.

Comments the Senior Conservation Officer indicated no objection and no harm to the settings of listed buildings, Hazelbury Bryan Conservation Area and Dungeon Hill Scheduled Monument. And less than substantial harm to the setting of Rawlsbury Camp

In relation to the landscape impact and character, there would be some residual harm, which when mitigated would be outweighed by the scheme in terms of new energy regeneration.

Although some impacts remained, these had been mitigated by amendments to scheme and the reduction in the number of arrays which made the impacts more acceptable.

Officers detailed the impacts of the loss of agricultural land, highways and

transport implications, residential amenity, biodiversity and tree protection, if approved the scheme would result in 75% biodiversity net gain and decommissioning of the site and restoration after 35 years.

In summarising the Development Management Area Manager (N) reiterated that the site would power 13000 homes each year and offer a significant number of jobs during construction, there was no harm to heritage assets, the sequential and exception test was approved and the mitigation acceptable,

The site avoided the best agricultural land and would after 35 years be returned to agricultural use. There would be a gain in biodiversity with no harm to neighbouring amenity or highways.

The recommendation was to grant subject to conditions outlined.

Oral Representation in objection to the application was received from A Cake, I Bryan and M Bentley

F Button, Deputy CEO at BSR (British Solar Renewables) the applicant addressed the committee in support of the application.

Oral representation in objection to the application was received from H Fairman (Pulham Village Meeting Parish Council), D Horrell (Mappowder Parish Council), C May (Lydlinch and Kings Stag) and Cllr Pauline Batstone, Ward Member for Dorset Council.

Concerns of those objecting focussed on the risk of flooding, lack of consultation from the applicant, climate change resulting in further flooding, the surface run of water and no infiltration tests having been undertaken, the method of planning balance, adverse impact on the AONB, loss of farmland, unsuitable access to the site, impacts on historical assets and the energy would energy produced would not benefit Dorset directly.

The applicant re-iterated the benefits of the scheme.

In response to the comments from public speakers the Project Engineer advised that the applicant had provided a very robust flood risk assessment and flood water drainage strategy, with those proposed mitigation measures there was no additional risk of flood water from the site.

Responding to objectors perceived lack of consultation the Legal Business Partner (regulatory) advised members that there was a statutory requirement to carry out pre-application consultation with local people, but this was limited to specific types of wind power and did not apply to this application.

The Transport Development Liaison Manager was in attendance virtually and he responded to the concerns raised in relation to construction traffic.

There were no concerns from Highways.

The Head of Planning addressed the comments regarding consultation, he appreciated there were significant concerns, however it was important to consider the public benefits in the broader term not just local benefits.

Following public speaking the committee members were given the opportunity to ask questions prior to debating the application.

Officers responded and advised that the model used in assessing fluvial flooding was up to date and took climate change into account. There was a need to demonstrate that any development would not make flooding worse, the modelling was very conservative and tended to over-estimate. Following a query about the restoration condition (No 18) it was suggested that for clarity the condition be updated to state that it wouldn't be a requirement for the soft landscaping to be removed. It was not considered that the arrays would increase flood risks and to mitigate the glare and appearance they would have a film to reduce those impacts. The habitat mitigation payment of £48,000 was discussed and the inclusion of routes through the site for wildlife, maintenance and grazing on grassland and access for fire safety vehicles.

On balance the committee members felt that the benefits of the scheme outweighed the adverse impact.

Proposed by: Cllr Belinda Ridout, seconded by Cllr Kelvin Clayton

Proposed by: Cllr Toni Coombes, seconded by Cllr Shane Bartlett

That a condition be added to ensure that if the access track is damaged then it would be the responsibility of the developer to put right.

Decision: that permission be granted, subject to the completion of a legal agreement under section 106 of the Town and Country Planning Act 1990 (as amended) in a form to be agreed by the Legal Services Manager to secure the following: £28,029.00 as a Conservation Payment to pay for the creation/restoration and management of sufficient new habitat for great crested newts and to compensate for the impacts of the applicant's proposal for 25 years. With the additional condition proposed by Cllr Coombes, the amended condition 18 and the conditions outlined in the appendix to these minutes.

In accordance with procedural rule 8.1 a vote was taken, the committee agreed to exceed the 3 hour meeting time limit.

12:45 Cllrs Kelvin Clayton and Jean Dunseith left the meeting.

12;46 – 13;00 comfort break.

Application to extinguish part of Footpath 79 and divert part of Bridleway 80, Beaminster

- b) The Senior Definitive Map Technical Officer presented the report which considered an application to extinguish part of Footpath 79 and divert part of Bridleway 80, Beaminster in the light of objections received and recommended that extinguishment and diversion orders were made on the basis that the relevant legal tests had been met.

The application had come to committee as objections had been received by the Council.

With the aid of a visual presentation the Senior Definitive Map Technical Officer highlighted the current route of the footpath and bridleway from point to point on the route including views to the south and north from various points of the bridleway.

The proposed new route was highlighted and would be upgraded at certain points along the route.

Two consultations had been carried out and the results of the consultations were presented to the committee members.

Legal tests had been met for each order had to be considered separately and Officers considered that the application to extinguish footpath 79 Beaminster met the tests under section 118 of the Highways Act 1980. Officers also considered the application to divert bridleway 80 also met the legal tests under section 119 of the Highways Act 1980.

Oral representation in objection to the application was received from M Oppe. His main concerns were that 7 out of 10 of the supporting comments were received after the deadline for representations and the report had given more weight to the supporters than the objectors, he drew the committee's attention to the Ecological Survey Summary.

Oral representation in support of the application was received from D Hazelhurst, the applicant, highlighting the benefits and improvements of the application.

Officers responded to speaker comments and advised that the pre-order consultation was not statutory so late representations could be considered.

Members expressed some concern that the footpaths and bridleways had not been maintained by the Council. In response to a question regarding fencing of the new route, officers advised that no fencing was planned, but could not say whether the fields would be used for livestock at any

stage.

Proposed by Cllr Toni Coombes, seconded by Cllr John Worth

Decision: That:

- (a) The application to extinguish part of Footpath 79 and divert part of Bridleway 80, Beaminster as shown on Drawing P226/23/2 attached as Appendix 1, be accepted and extinguishment and diversion orders made;
- (b) The Orders include provisions to modify the definitive map and statement to record the changes made as a consequence of the extinguishment and diversion; and
- (c) If the Orders are unopposed, and are considered to meet the legal tests they be confirmed by the Council.
- (d) If the Orders are opposed, and the objections to the Orders are of a similar nature to those already considered by the Committee, they be submitted to the Secretary of State without further reference to the Committee.
- (e) The Orders are to be made concurrently. The Extinguishment Order shall be confirmed only upon confirmation of the Diversion Order. If objections are received to one order but not the other, both orders will be submitted to the Secretary of State for confirmation.

9. Urgent items

There were no urgent items.

10. Exempt Business

There was no exempt business.

Decision Sheet

Duration of meeting: 10.00 am - 1.36 pm

Chairman

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Strategic and Technical Planning Committee 26 July 2023 Decision List

Application Reference: P/FUL/2021/01018

Application Site: North Dairy Farm Access To North Dairy Farm Pulham Dorset DT2 7EA

Proposal: Install ground-mounted solar panel photovoltaic solar arrays, substation, inverter stations, transformer stations, security fencing, gates and CCTV; form vehicular access, internal access track, landscaping and other ancillary infrastructure

Recommendation:

Recommendation A:

Grant permission, subject to the completion of a legal agreement under section 106 of the Town and Country Planning Act 1990 (as amended) in a form to be agreed by the Legal Services Manager to secure the following:

£28,029.00 as a Conservation Payment to pay for the creation/restoration and management of sufficient new habitat for great crested newts and to compensate for the impacts of the applicant's proposal for 25 years.

and the following conditions (see section 17 for full wording and reasons):

- Time Limit
- Temporary permission
- Plans
- Arboricultural Method Statement
- Soft and hard landscaping
- Surface water management and drainage designs
- External appearance of ancillary structures/equipment
- Construction Environmental Management Plan
- FRA and Drainage Strategy
- Flood Warning and Evacuation Plan
- Landscape and Ecological Management Plan
- Unexpected contamination
- Hedgerow minimum height
- CCTV pole height
- Construction hours
- Decommissioning details

Recommendation B:

Refuse permission for failing to secure the financial obligations detailed above if the agreement is not completed by 22 December 2023 or such extended time as agreed by the Head of Planning.

Refuse permission for failing to secure the financial obligations detailed above if the agreement is not completed by 22 December 2023 or such extended time as agreed by the Head of Planning.

Decision: That the application be granted subject to to the completion of a legal agreement under section 106 of the Town and Country Planning Act 1990 (as amended) in a form to be agreed by the Legal Services Manager to secure the following:

£28,029.00 as a Conservation Payment to pay for the creation/restoration and management of sufficient new habitat for great crested newts and to compensate for the impacts of the applicant's proposal.

and the following conditions:

1. The development to which this permission relates must be begun not later than the expiration of three years beginning with the date of this permission.

Reason: This condition is required to be imposed by Section 91 of the Town and Country Planning Act 1990 (as amended).

2. This permission is limited to a period of 35 years from the date of first export of electricity to the grid. Written notice shall be given to the Local Planning Authority within 14 days of the date when electricity is first exported to the grid by the development hereby permitted. Thereafter, the development (including all ancillary equipment and buildings) hereby permitted shall be removed in its entirety and the land restored to its former condition within 35 years and six months of the date of first export to the grid, or within 18 months of the cessation of generation of electricity if the development fails to generate electricity for 12 consecutive months, whichever is the sooner. The land shall be restored in accordance with a scheme of decommissioning works and land restoration (including timescales) pursuant to condition 18 of this consent.

Reason: The ensure the impacts of the development exist only for the lifetime of the development.

3. The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Location Plan 1641 0200 05
Planning Layout 1641 0201 01 Iss15
LEEP 12761/P11 Rev K
Construction Compound Plan 13823-HYD-XX-XX-DR-TP-0002 Rev P02
Passing Space Plan 13823-HYD-XX-XX-DR-TP-0001 Rev P01
HV Compound Elevation Views 1641-0208-81 Iss04
HV Compound Plan View 1641-0208-80 Iss04
Aux Transformer Detail 1641-0207-02 Iss02
Access Road Sections 1641-0208-10 Iss02
Welfare Container Detail 1641-0207-41 Iss02
Fence Detail 1641-0205-01 Iss02
PV Mounting System 1641-0201-28 Iss02
Transformer Station Detail 1641-0207-00 Iss01
Spares Container Detail 1641-0207-40 Iss02

Reason: For the avoidance of doubt and in the interests of proper planning.

4. Prior to commencement of development a detailed Arboricultural Method Statement (AMS), prepared by a qualified tree specialist, providing comprehensive details of construction works in relation to trees that have the potential to be affected by the development must be submitted to and approved in writing by the local planning authority. All works must be carried out in accordance with the approved details. In particular, the method statement must provide the following:
 - a) a specification for protective fencing to trees and hedges during both demolition and construction phases which complies with BS5837 (2012) and a plan indicating the alignment of the protective fencing.
 - b) a specification for scaffolding of building works and ground protection within the tree protection zones in accordance with BS5837 (2012).
 - c) a schedule of tree work conforming to BS3998.
 - d) details of the area for storage of materials, concrete mixing and any bonfires;
 - e) plans and particulars showing proposed cables, pipes and ducts above and below ground as well as the location of any soakaway or water or sewerage storage facility
 - f) details of any no-dig specification for all works within the root protection area for retained trees
 - g) details of the supervision to be carried out by the developers tree specialist.

Reason: This information is required to be submitted and agreed before any work starts on site to ensure that the trees and hedges to be retained will not be damaged prior to, or during the construction works.

5. Prior to commencement of the development hereby approved a final hard and soft landscaping scheme, showing precise details of all existing and proposed tree, shrub and hedgerow planting (including positions and/or density, species and planting size) and a schedule of materials and finishes to be used for all new areas of hard landscaping/surfacing/paths and means of enclosures must be submitted to and approved in writing by the Local Planning Authority. Thereafter the landscaping must be carried out in accordance with the approved details and, in the case of soft landscaping, carried out before the end of the first available planting season following substantial completion of the development. In the 34 year period following commencement of the development any existing and proposed trees, shrubs or hedgerows that are removed without the written consent of the Local Planning Authority or which die or become (in the opinion of the Local Planning Authority) seriously diseased or damaged, shall be replaced as soon as reasonably practical and not later than the end of the first available planting season, with specimens of such size and species and in such positions as shall first be agreed in writing with the Local Planning Authority.

Reason: To ensure that adequate mitigation for the landscape and visual impact of the proposals and the provision of an appropriate landscaping scheme has been agreed.

6. Prior to commencement of the development a detailed surface water management scheme for the site, based upon the hydrological and hydrogeological context of the development, and including clarification of how surface water is to be managed during construction and the party responsible, must have been submitted to and approved in writing by the local planning authority. The scheme must provide mitigation measures to intercept turbid flows and reduce erosion risk. Thereafter, the surface water scheme shall be fully implemented in accordance with the submitted details before the development is completed.

Reason: To prevent the increased risk of flooding, to improve and protect water quality, and to improve habitat and amenity.

7. Prior to commencement of the development details of maintenance and management of both the surface water sustainable drainage scheme and any receiving system must have been submitted to and approved in writing by the local planning authority. The details must include a Soil Management Plan which considers measures to avoid over compaction of soils, during and post construction, as well as maintenance and protection of grass cover. The maintenance and management scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. The scheme shall include a plan for the lifetime of the development, the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the surface water drainage scheme throughout its lifetime.

Reason: To ensure future maintenance of the surface water drainage system, and to prevent the increased risk of flooding.

8. Prior to commencement of the development a detailed drainage design for the access roads, any areas of hardstanding and swales must have been submitted to and approved in writing by the local planning authority. Thereafter, the drainage schemes must be implemented and thereafter managed and maintained in accordance with the approved details.

Reason: To ensure future maintenance of the surface water drainage system, and to prevent the increased risk of flooding.

9. Prior to the installation of the transformers, inverters, CCTV equipment & poles, all fencing and other ancillary equipment a plan showing the locations of these structures and details of the external material finish of each of these structures must be submitted to and approved in writing by the Local Planning Authority. Thereafter the development must be carried out in accordance with the approved details.

Reason: To mitigate the wider visual impact of the development, including the setting of the Dorset AONB.

10. Prior to commencement of the development the submitted Construction Environmental Management Plan (CEMP) must be implemented and adhered to fully for the full length of the construction period.

Reason: to minimise the likely impact of construction traffic on the surrounding highway network and prevent the possible deposit of loose material on the adjoining highway.

11. The development hereby approved shall be carried out in accordance with the details set out in the Flood Risk Assessment and Drainage Strategy, dated 18 March 2021. Thereafter, the scheme shall be managed and maintained for the lifetime of the development in accordance with the approved details.

Reason: To ensure adequate facilities are provided in the interests of flooding and pollution.

12. The long-term mitigation and protocols in the event of a flood event shall be carried out in accordance with the details set out in the Flood Warning and Evacuation Plan, dated 22 July 2022 for the lifetime of the development in accordance with the approved details.

Reason: To ensure public safety in the event of flooding.

13. The long-term management, maintenance and monitoring of the landscape and environment of the site shall be implemented in full and in accordance with the details and timescales within the approved Landscape and Ecological Management Plan (LEMP) dated September 2022 throughout the lifetime of the development.

Reason: To ensure impacts upon the local landscape, nature conservation interests and biodiversity are satisfactorily mitigated and enhanced.

14. In the event that contamination is found at any time during the construction of the approved development, it must be reported in writing immediately to the Local Planning Authority and an investigation and risk assessment must be undertaken in accordance with requirements of BS10175 (as amended). If any contamination is found requiring remediation, a remediation scheme, including a time scale, shall be submitted to and approved in writing by the Local Planning Authority. Remediation shall be carried out in accordance with the approved scheme and on completion of the approved remediation scheme a verification report shall be prepared and submitted within two weeks of completion and submitted to the Local Planning Authority.

Reason: To ensure risks from contamination are minimised.

15. All new and existing healthy native hedgerows on and around the application site shall be maintained at a height of at least 3 metres above ground level.

Reason: To mitigate the wider visual impact of the development within the setting of the Dorset AONB.

16. Prior to the installation of any CCTV poles, a plan confirming the height of the CCTV poles must be submitted to and approved in writing by the Local Planning Authority. The development must be carried out in accordance with the approved plan and the CCTV poles shall be no taller than 3.5 metres in height above ground level.

Reason: To allow for the detailed design of CCTV to ensure full site coverage and consideration of impacts upon the local landscape character.

17. No construction or decommissioning works shall take place except between the following hours:

0700 to 1800 Monday to Friday

0700 to 1700 Saturday

No construction or decommissioning works shall take place at any time on Sunday or a Bank Holiday.

No construction deliveries shall be made to the site except between the following hours:

0900 to 1700 Monday to Saturday

No construction deliveries shall take place at any time on Sunday or a Bank Holiday.

Reason: In the interests of neighbouring amenity and local traffic generation.

18. Not later than 6 months before planned decommissioning of the whole development hereby approved a scheme for decommissioning and the restoration of the site shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall make provision for the removal of the solar arrays and all associated above ground structures, equipment, means of enclosures and foundations, to a depth of at least one metre below finished ground level. The scheme shall include the management and timing of any works; a traffic management plan; an environmental management plan including measures to protect wildlife and habitat; identification of access routes; restoration measures to return the site back to its condition at the time of the granting of planning permission; and a programme of implementation (to include timescales). Thereafter, re-instatement shall be carried out in accordance with the approved scheme.

Reason: To ensure that due regard is paid to the continuing enhancement and maintenance of amenity afforded by the landscape features of landscape, nature conservation or archaeological significance.

Strategic and Technical Planning Committee 16 October 2023

Application to correct the commons register by removing land registered as common land at Knighton Common, Winfrith Newburgh For Decision

Portfolio Holder: Cllr D Walsh, Planning

Local Councillor(s): Cllr Laura Miller, Cllr Peter Wharf

Executive Director: J Sellgren, Executive Director of Place

Report Author: Carol McKay
Title: Senior Definitive Map Technical Officer
Tel: 01305 225136
Email: carol.mckay@dorsetcouncil.gov.uk

Report Status: Public

Brief Summary: This report considers an application to correct Dorset Council's Register of Common Land by removing land registered at Knighton Common, Winfrith Newburgh under Section 19(2)(a) of the Commons Act 2006 and recommends rejection on the basis that insufficient evidence has been submitted in support of the application.

Recommendation:

That:

- (a) The application CLD 2022/1 to correct the Register of Common Land by removing land registered at Knighton Common, Winfrith Newburgh is rejected.
- (b) The Register of Common Land remain unchanged.

Reason for Recommendation:

- (a) The proposal to correct the Register of Common Land does not meet the legal criteria set out under Section 19(2)(a) of the Commons Act 2006.

(b) Even if the application is within the scope of s19(2)(a), the evidence presented to the Council is insufficient to demonstrate that a mistake was made so that application CLD 2022/1 should be rejected and consequently the application land should remain registered as Common Land.

1 Background

- 1.1 Dorset Council has received an application (the “Application”) from Mr Malcolm Shakesby (the “Applicant”) to correct the Register of Common Land (the “Commons Register”) by removing land registered at Knighton Common, Winfrith Newburgh (the “Application Land”) as shown shaded green on Dorset Council’s commons search results plan attached as Appendix 2.
- 1.2 The Commons Register is in paper form, with written entries and a corresponding map. A digital representation of the map is also maintained by the Council which is used in common land search queries.
- 1.3 During the processing of this Application, it became apparent that the digital version of the Commons Register should be modified to better reflect the claimed parcel of land shown on the official paper Commons Register. A small section of the southern end of the common land has therefore been edited and is now correctly shown on the plan attached as Appendix 3.
- 1.4 This modification to the digital version of CL98 has no material impact on the Application.
- 1.5 Dorset Council is the Commons Registration Authority (the “CRA”) for the Dorset Council area and has powers under the Commons Registration Act 1965 (“the 1965 Act”) and the Commons Act 2006 (“the 2006 Act”), to maintain the Commons Register and make certain amendments to it (see Section 2 – Law, below).

2 Law

Commons Registration Act 1965

- 2.1 The 1965 Act¹ required that all common land should be registered together with any rights exercisable over the land and a record of its ownership.
- 2.2 A three year period of registration followed, between 1967 and 1970 and any objections to the registrations were handled by Commons Commissioners.
- 2.3 Under Section 9 of the 1965 Act, where the registration of any land as common land has become final but no person is registered as the owner of the land, then, until the land is vested under any provision hereafter made by Parliament, any local authority in whose area the land or part of the land is situated may take such steps for the protection of the land against unlawful interference as could be taken by an owner in possession of the land, and may institute proceedings for any offence committed in respect of the land.

Commons Act 2006²

- 2.4 Part 1 of the 2006 Act provides for commons registration authorities to continue to keep registers of common land and town or village greens, and to permit amendments to be made to the registers in accordance with the provisions in that Part. This replaces and improves the registration system under the 1965 Act, but using the same registers prepared under that Act.
- 2.5 The 2006 Act has been fully implemented in nine authorities to date, leaving most authorities still operating under the 1965 Act. Dorset Council is known as a 1965 Commons Registration Authority (“a 1965 authority”).
- 2.6 As a 1965 authority, Dorset Council can accept applications under Section 19(2)(a)³ to correct the commons register.

¹ <https://www.legislation.gov.uk/ukpga/1965/64/contents>

² <https://www.legislation.gov.uk/ukpga/2006/26/contents>

³ <https://www.legislation.gov.uk/ukpga/2006/26/section/19>

- 2.7 Under Section 19(2)(a) of the 2006 Act, Dorset Council may amend its register of common land or town or village greens to correct a mistake made by the CRA in making or amending an entry in the register.
- 2.8 Dorset Council does not have the powers to accept applications under Section 19(2)(b to e) which cover a wider range of amendments to the Register.

Commons Registration (England) Regulations 2014

- 2.9 The Commons Registration (England) Regulations 2014⁴ (the “2014 Regulations”) sets out the procedures to be followed for applications to amend the Commons Register.

3 Current Registration Details

- 3.1 The Application Land Register Unit No. CL98 was registered following an application made by Mrs M Killingback on 24 June 1968. The land, known as Knighton Common, in the parish of Winfrith Newburgh is a tract of about 0.8 acres and consists of a field to the east which is partly fenced, a track which bisects the common land and a verge and ditch along the western edge of the track. The track is a public footpath (Footpath 5, Winfrith Newburgh) and also serves as private access for a number of properties.
- 3.2 The Application Land is shown in an extract from the Commons Register (attached as Appendix 1). An updated digital representation of the Application Land is shown on the plan attached as Appendix 3 as discussed above (1.2 – 1.4).
- 3.3 The Application Land was provisionally registered on 28 June 1968 and being undisputed the registration became final on 2 November 1971.
- 3.4 As the common had no registered owner, it was referred to the Commons Commissioner in 1972 who held a hearing for the purpose of inquiring into the question of ownership of the land on 12 May 1972. The decision was that the land was not owned by any person and it therefore fell into protection under Section 9 of the 1965 Act (see 2.3 above).

⁴ <https://www.legislation.gov.uk/uksi/2014/3038/contents/made>

4 Application

- 4.1 The Application was submitted to Dorset Council on 28 June 2022, by Michelmores LLP on behalf of the Applicant, Malcolm Shakesby.
- 4.2 The Application was signed on 27 June 2022 and was duly made for the purposes of the 2006 Act.
- 4.3 The Applicant submits that the Application Land was initially added to the Commons Register in error and that it has been mistakenly designated as common land since the date of its registration.
- 4.4 The Application was accompanied by the following supporting evidence:
 - Submissions in support of Application
 - Bundle of Exhibits referred to in the Submissions
 - Dorset Council commons search and result
 - Ordnance Survey Map of Winfrith Heath
 - Plans of Winfrith Heath
 - Notes and Map of footpath produced by Dorset Council
- 4.5 The Application documents were made available on Dorset Council's website.
- 4.6 Additional evidence (the "Additional Evidence") was submitted by the Applicant in May 2023.
- 4.7 A copy of the Additional Evidence was sent to Representors, with an opportunity to comment on these documents. The Additional Evidence is summarised in Appendix 6.
- 4.8 It is for the Applicant to prove their case and there is no requirement for the CRA 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 Consultation

- 5.1 The Application was publicised in accordance with the 2014 Regulations in December 2022. Advertisements placed on site and on the Council's website invited representations to the Application within the period specified in the 2014 Regulations. In this case the objection period expired on Thursday 19 January 2023.
- 5.2 Eight representations (the "Representations") were received to the consultation, including one in support of the Application, six opposed and one in support of part of the Application. The Representations are summarised in Appendix 4, and full copies are available on the case file.
- 5.3 As discussed in 1.2 – 1.4 above, the digitised Commons Register data has recently been modified to more accurately show CL98. The consultation plan CLD2022/2/22/1 (Appendix 5) shows an earlier version of the digital commons register. However the alteration has no material impact on the Application.
- 5.4 Winfrith Newburgh Parish Council and Mr and Mrs Malins raised concerns about the consultation process as neighbouring landowners and other freeholders were not consulted.
- 5.5 The application was publicised in accordance with the 2014 Regulations with no requirement to consult neighbouring landowners.
- 5.6 Following the consultation, copies of the Representations were sent to the Applicant for his comment.
- 5.7 The Applicant submitted a reply to the Representations (the "Reply") under Regulation 25(4) of the 2014 Regulations.
- 5.8 A copy of the Reply was sent to all representors (the "Representors") for any further comments ("Further Comments").
- 5.9 All subsequent comments ("Additional Comments") received from either the Representors or the Applicant were sent to the respective other party for response.
- 5.10 Representations, Further Comments and Representors' Additional Comments are summarised in Appendix 4.

- 5.11 The Applicant's Reply, Additional Evidence and Additional Comments are summarised in Appendix 6.

6 Discussion

Application Land - ownership

- 6.1 The Application states that the Application Land is "a small area of land at East Knighton, adjacent to "Oak View", East Knighton, Dorchester, Dorset DT2 8LH...approximately 0.8 acres in size....shaded green on the...plan provided by Dorset Council as part of the result of the Commons Search dated 29 August 2019". The plan included with the Application is attached to this report as Appendix 2.
- 6.2 The Application states that Malcolm Shakesby is the freehold owner of the Application Land.
- 6.3 The Reply suggests "there is some confusion in the objections as to the extent of the land subject to this application" and that "the applicant wishes to make clear that his application relates solely to the land registered on the Commons Register that falls within his own legal ownership".
- 6.4 The Reply requests that comments made by Representors as regards land not within the Applicant's ownership be disregarded by the Council in its consideration of this Application.
- 6.5 In their Further Comments, the Open Spaces Society state that the Application ought to be determined in relation to the whole of the land applied for.
- 6.6 Sandra Baker and Ken Homer support the application in part and request that the verge to the west of the lane be considered separately with this land removed from the commons register, and the fenced plot opposite their property remain on the register.
- 6.7 The Applicant states that when he bought the land in 1986 from the Weld Estate the deeds did not mention common land or manorial rights.
- 6.8 The Weld Estate appeared to have believed that the rights had been extinguished and this was also the "local assumption" when the 1957 Winfrith Heath Bill came into force.
- 6.9 The Applicant states that this assumption was never "officially ratified".

- 6.10 The Additional Evidence included a copy of a title deed dated 1957, with details of a wayleave agreed between Joseph William Weld; Humphrey Joseph Giles Weld; George Bellord; Geoffrey Edmond de Trafford, Edric Humphrey and the Southern Gas Board dated 18 November 1957.

OFFICER COMMENTS:

- 6.11 The Application did not stipulate that it related solely to the land registered to the Applicant therefore a consultation was carried out on the whole of CL98.
- 6.12 A Land Registry search carried out before consulting on the Application shows that the Application Land is registered to four landowners including Mr Shakesby. All affected landowners were consulted by the Council.
- 6.13 Under the legislation, the Application may be granted in whole or part. It is therefore within the Council's powers to remove CL98 from the register, or that part registered to the Applicant.
- 6.14 Officers consider that the whole of the Application Land CL98 should be considered as submitted to it.
- 6.15 Assumptions about the status of land, or omissions of information during transfer of land between owners have no effect on the registration of the Application Land as common land.
- 6.16 A wayleave agreement is not relevant to the consideration of an application to correct the Commons Register and provides no evidence of a mistake in registering the Application Land.

Registration of CL98

- 6.17 The Application submits that when the Application Land was added to the Commons Register, Dorset County Council appears not to have informed the legal owners of the land at that time and that as a result no objections were received to the registration of the land as a common.

OFFICER COMMENTS:

- 6.18 In accordance with regulation No. 11(1) of the Commons Registration (General) Regulations 1966, (which required the CRA to send a copy of any registration to every concerned authority not later than four weeks after the date of registration), Dorset County Council notified Wareham and Purbeck Rural District Council and Winfrith Newburgh Parish Council of the provisional registration. The letter requested that the information be kept available for public inspection at all reasonable times in accordance with Regulation No. 11(3). As discussed in 3.4 above, an inquiry was held in 1972 over the question of ownership of the land and no owner was established at that time. Under the 1965 Act, the CRA was not required to notify the legal owners of the land of the provisional registration, so no mistake was made.

Scope of Section 19(2) Commons Act 2006

- 6.19 The Applicant contends that the wording of the provision of the 2006 Act does not impose any restriction on the nature and type of mistake which an applicant can apply to the CRA to correct. In his Reply he states that the Representors have not provided any evidence in support of any contrary interpretation of the legislative provisions.
- 6.20 In his Reply, the Applicant makes reference to R (oao Naylor) v Essex County Council [2014] EWHC 90 (Admin) at 97 (“Naylor V Essex CC”) stating that the judge’s comments, although “obiter dictum” indicate that he did not consider that Section 19 required a restrictive interpretation.
- 6.21 The Reply also refers to the Council’s website not specifying a restriction on the type of mistakes which can be addressed by an application pursuant to Section 19(2)(a).
- 6.22 The Open Spaces Society argue that no evidence has been submitted to say that there is a mistake made by the CRA in making an entry in the register and that nothing in the Reply rebuts the fundamental flaw in the Application.
- 6.23 Steve Byrne states that Section 19(2)(a) of the 2006 Act is concerned solely with copying or transcription errors therefore the question at issue, is not whether the registration authority ‘made a mistake’ in registering a particular area of land as common land but whether land was wrongly registered as result of a copying or transcription error.

- 6.24 Mr and Mrs Malins highlight that no relevant information or evidence has been provided by the Applicant, who has chosen to use the section of the Act relating to correction of the Register rather than the section that deals with deregistration.

OFFICER COMMENTS:

- 6.25 With regards to *Naylor v Essex CC*, this was a renewed application for permission to bring a judicial review claim after an earlier application was refused and as such the comments made carry limited weight with regards Section 19(2)(a) applications. The hearing was for permission for judicial review into Essex County Council's decision to reject an application to register a Town or Village Green under Section 15 of the 2006 Act. The matter of Section 19 was not discussed further at the full hearing.
- 6.26 Dorset Council's website⁵ advises "You can apply to correct the register if you think that land or buildings have been incorrectly registered as common land or as a village green, for example, if an error was made when mapping the boundary of a common at the time it was registered." It also confirms "Your application must include evidence to show how the mistake or error was originally made." and advises reading the government's guidance for commons registration authorities and applicants before applying to correct the register.
- 6.27 The Explanatory Notes⁶ to section 19 say that correction of mistakes under Section 19(2)(a) can only be made where the mistake was made by the Registration Authority; if there was a mistake in the application which was faithfully reproduced by the Registration Authority it cannot be corrected under this section.

⁵ <https://www.dorsetcouncil.gov.uk/countryside-coast-parks/commons-and-town-and-village-greens/changes-corrections-to-registers-commons-town-and-village-greens>

⁶ <https://www.legislation.gov.uk/ukpga/2006/26/notes/division/6/1/4/2>

- 6.28 Government guidance⁷ states “1965 authorities can only correct the registers if the registration authority made a mistake when it made or amended an entry in the register - for example, if a registration authority recorded the boundary of a common in a way that didn’t match the way it was shown in the application; read Section 19(2)(a). But if the authority recorded all the information in an application then it doesn’t qualify as a local authority’s mistake”.
- 6.29 Government guidance also states “Your application will need to show that the registration authority is responsible for the mistake. So, for example, if an applicant attached a map with a mistake in it to their registration, the mistake was the applicant’s and not the registration authority’s.”
- 6.30 The Applicant has offered insufficient authority to support his claim that the scope of Section 19(2)(a) of the 2006 Act includes mistakes other than those made by the CRA during the registration of the Application Land.

Rights of Common

- 6.31 The Applicant states that there are no rights of common currently registered to the Application Land and therefore no benefit to commoners. Mr Shakesby has not witnessed any person using rights of common over the land during the period of his ownership.
- 6.32 The Reply also notes “On a practical level, the effect of the continued registration of this Land as a common is almost entirely without utility” and that there are no rights of common registered on the commons register. The status of the Application Land as a common is therefore one that exists, in effect, in name only.”

OFFICER COMMENTS:

- 6.33 The Application Land was recorded in the Lands section and no corresponding entry was placed in the Rights section of the Register. No rights for commoners are recorded, for example the right to graze stock or to collect bracken or firewood.

⁷ <https://www.gov.uk/government/collections/common-land-guidance-for-commons-registration-authorities-and-applicants>

- 6.34 Despite this, the Application Land still carries public rights as the public have the right to access registered common land.
- 6.35 The absence of an entry on the Rights section of the Commons Register carries no weight in considering an application to correct the Commons Register under Section 19 (2)(a) of the 2006 Act.
- 6.36 The utility of the common is not a matter that can be taken into account.

Manorial Rights

- 6.37 The Applicant's Reply disputes the Open Spaces Society's assertion that the Application Land was subject to manorial rights. He states that the 1986 hearing into the ownership of the Application Land concluded that the Weld Estate were freehold owners of the Application Land and therefore the Application Land could not be classed as unoccupied or uncultivated.

OFFICER COMMENTS:

- 6.38 Whether the Application Land was classified as manorial waste prior to registration as common land is not a relevant consideration when considering an application under Section 19(2)(a). In addition, officers believe landownership is irrelevant in considering whether the land is manorial waste.

Fencing of Application Land

- 6.39 The Application states that the designation of the Application Land as registered common is detrimental to Mr Shakesby's use of the land as he is unable to erect new fencing on the land so it is vulnerable to fly-tipping and access by travellers.
- 6.40 In the Applicant's Reply, he states that the objections which were raised concerning the lack of consent for fencing the Application Land are irrelevant.

OFFICER COMMENTS:

- 6.41 The effect of the designation of the Application Land as registered common is not a matter that can be taken into account under Section 19 of the 2006 Act.

6.42 Several objectors have requested that Dorset Council seek removal of the existing fence.

6.43 Whilst the matter cannot be taken into account, the following advice is given to both the Applicant and Representors:

- A landowner must get consent from the Planning Inspectorate on behalf of the Secretary of State for Environment, Food and Rural Affairs to carry out any works that would prevent or impede access to common land or for works for the resurfacing of land including putting up new fences.
- Neither the Planning Inspectorate nor the CRA has any duty to take enforcement action against unauthorised works on common land.
- Where restricted works on common land that require consent are carried out without it, Section 41 of the 2006 Act enables any person to make an application to the county court to rectify the situation.
- To avoid the need for court action, landowners are encouraged to make a retrospective application for consent for works may be made, although there is no guarantee that a retrospective application will be successful.

Public Right of Way

6.44 A copy of the 1950 Parish Survey and notes are included with the Application. These show the initial claimed route of Footpath 10, Winfrith Newburgh (now renumbered Footpath 5) which runs from the A352 through the Application Land to join Footpaths 4 and 6 and Bridleway 24, Winfrith Newburgh as shown on the plan attached as Appendix 5.

6.45 The Reply suggests that if there had been rights of common in existence when Footpath 10 was added to the definitive map it would not have been necessary to add a new right of way as the public would already have rights to walk across the land.

OFFICER COMMENTS:

- 6.46 The National Parks and Access to the Countryside Act 1949 required the County Council as “Surveying Authority” to compile the record of the public rights of way network and the District and Parish Councils were consulted to provide the County Council with information for the purposes of the survey.
- 6.47 Designation of land as common does not exempt that land from public rights of way being recorded.
- 6.48 The suggestion that Footpath 10 would not have been added to the definitive map if rights of common were in existence is incorrect. The public did not have rights to access Common Land until the Countryside and Rights of Way Act 2000.

Winfrith Heath Act 1957

- 6.49 The Application states that the Winfrith Heath 1957 Act (the “1957 Act”) which extinguished rights of common over areas of Winfrith Heath, excluded the Application Land and that this was an administrative oversight on the part of the drafters of the legislation since the Application Land is physically separate from the other areas of common land preserved by the 1957 Act.
- 6.50 The Application says “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.”
- 6.51 The Applicant submits that if the Application Land had been extinguished through the 1957 Act, it would not have been possible to make an application to register the land as common land in 1968.
- 6.52 The Reply disputes the Open Spaces Society’s statement that the extinguishment of rights of common would have been confined to land required for the nuclear research site including the buffer land.
- 6.53 The Additional Evidence states that notes made in pencil on the draft version of the Winfrith Heath Bill suggest discussions had taken place over whether the 1957 Act affected all or part of Knighton Heath and that the final wording of the 1957 Act indicates that the draftsman did not consider the Application Land to be part of Knighton Heath.

- 6.54 In response to the Applicant's Additional Evidence, Mr and Mrs Malins comment that this interpretation of the 1957 Act is speculative.

OFFICER COMMENTS:

- 6.55 The purpose of the Winfrith Heath Act 1957 was strictly limited to extinguishing certain common rights in the area that was to be used by the Atomic Energy Authority (AEA) as a nuclear research site and to provide compensation. It was not concerned with the question of preserving the amenities of the countryside. As a matter of fact the Application Land was not included in the Act.
- 6.56 Since the Application Land did not lie within the land that was to be used by the AEA, it was not removed from the Commons Register.
- 6.57 Whether the Application Land should have been included in the 1957 Act or not does not affect the determination of the Application under Section 19(2)(a) of the 2006 Act.

Leigh Common

- 6.58 Two of the Representors (The Open Spaces Society and Steve Byrne) refer to the Section 19(2)(a) application known as Leigh Common, drawing parallels between it and the Application.
- 6.59 In 2016 and 2017, applications were submitted to Dorset County Council⁸ to correct the Commons Register by removing part of Leigh Common (CLD 2016/1 and CLD 2017/1). The applications were granted by the Council but subsequently quashed following a challenge by the Open Spaces Society (OSS). The Council accepted the OSS' position that Section 19(2)(a) only allowed mistakes of the CRA to be corrected.
- 6.60 The Applicant argues that the Leigh Common case is irrelevant as the situation is very different.

OFFICER COMMENTS:

- 6.61 Each application made under Section 19(2)(a) of the 2006 Act is considered on its own merits.

⁸ On 1 April 2019 by virtue of the Bournemouth, Dorset and Poole (Structural Changes) Order 2018, Dorset County Council was abolished and its functions insofar as relevant to the Leigh Common applicant were vested in Dorset Council.

6.62 However the Leigh Common case relates to the scope of Section 19(2)(a) of the 2006 Act and so is relevant to the Application. The Leigh Common application argued for a wider interpretation of Section 19(2)(a) of the 2006 Act. Ultimately Dorset Council concluded that its initial decision to accept the application was flawed. It follows that for an application under Section 19(2) of the 2006 Act to be accepted, compelling authority for the wider interpretation of the section would need to be submitted.

7 Financial Implications

n/a

8 Environmental Implications

n/a

9 Well-being and Health Implications

n/a

10 Other Implications

none

11 Risk Assessment

HAVING CONSIDERED: the risks associated with this decision; the level of risk has been identified as:

Current Risk: LOW

Residual Risk: LOW

12 Equalities Impact Assessment

12.1 The application is made to correct a register kept and maintained by the Council. Officers do not consider that the decision would materially impact on anyone with protected characteristics.

13 Conclusion

13.1 In its capacity as CRA, the Council is required to adjudicate on the Application and to correct the register by removing the Application Land if there are sound reasons for doing so or, if not, to reject the application.

- 13.2 The task of proving the case in support of the correction of the register rests solely with the person making the application, and the burden of proof is the normal, civil standard, namely, the balance of probabilities.
- 13.3 Section 19(2)(a) of the 2006 Act does not confer power to correct *all* errors in the register so there is no power to correct an error in the quantification of rights shown in the register, unless the error was made by the CRA.
- 13.4 1965 authorities can only correct the registers if the CRA made a mistake when it made or amended an entry in the register – e.g. if an authority recorded the boundary of a common in a way that didn't match the way it was shown in the Application. But if the authority recorded all the information in an application then it does not qualify as a local authority's mistake.
- 13.5 It is necessary for members to consider whether the Application satisfies the statutory requirements to correct the Commons Register by removing the Application Land. The Applicant must prove that the requirements are met on the balance of probabilities.
- 13.6 The Committee's decision should be made on the balance of probability.
- 13.7 There is no right of appeal and the only recourse is by way of Judicial Review. There is a three month period for this after a decision is made.
- 13.8 The Applicant has provided insufficient evidence in the Application or any of the submissions received since, that a mistake was made by the CRA when it added the Application Land to the Commons Register.
- 13.9 Officers do not accept that Section 19(2)(a) of 2006 Act allows for correction of the Commons Register on the grounds put forward by the applicant.
- 13.10 Even if officers are wrong on that point, they do not consider that the applicant has provided sufficient evidence to demonstrate that the application land was not common land at the time of registration so that a mistake was made in registering it under the 1965 Act.
- 13.11 It is recommended that Application CLD 2022/1 is rejected and accordingly, the Register of Common Land should not be amended.

14 Appendices

- (1) Extract from Commons Register CL98
- (2) Commons Register digital plan submitted with Application
- (3) Updated Commons Register digital plan
- (4) Summary of Representations, Further Comments and Additional Comments received from Representors
- (5) Drawing CLD2022/1/22/1 – consultation plan
- (6) Summary of Applicant's Reply, Additional Evidence and Additional Comments

15 Background Papers

File ref CLD2022/1

September 2023

Register unit No. CL.98

Edition No. 1

Register of COMMON LAND

See Overleaf
for Notes

LAND SECTION—Sheet No. 1

No. and date of entry	Description of the land, reference to the register map, registration particulars etc.
98 28th June, 1968	The tract of about 0.8 acres called Knighton Common in the parish of Winfrith Newburgh, Dorset, as marked with a green verge line inside the boundary on sheet No. 43 of the register map and distinguished by the number of this register unit. Registered pursuant to application No. 206 made 24th June, 1968 by Mrs. M. Killingback, 39 Stowell Crescent, Wareham, Dorset. (Registration Provisional).
<i>(see entry No. 98/2 below)</i>	
<i>98/2 2 November 1971</i>	<i>The registration at entry No. 98 above, being undisputed, became final on 1 October 1970</i>

No. and date
of note

Notes

No. and date
of note

Notes

1

^{No. 662}
The application of Mrs M Killingback of ²⁹ 29, Stowell Crescent,
Wareham, Dorset made 11 December 1969 is noted in respect of the
registration at entry No. 98.

21 July 1970

NOTE: This section contains the registration of every right of common registered under the Act as exercisable over the whole or any part of the land described in the 1st section of this register unit.

Registration authority

DORSET COUNTY COUNCIL
APPENDIX 1

Register unit No. *CL/98*

Edition No. ()

Register of COMMON LAND

See Overleaf
for Notes

RIGHTS SECTION—Sheet No. 1

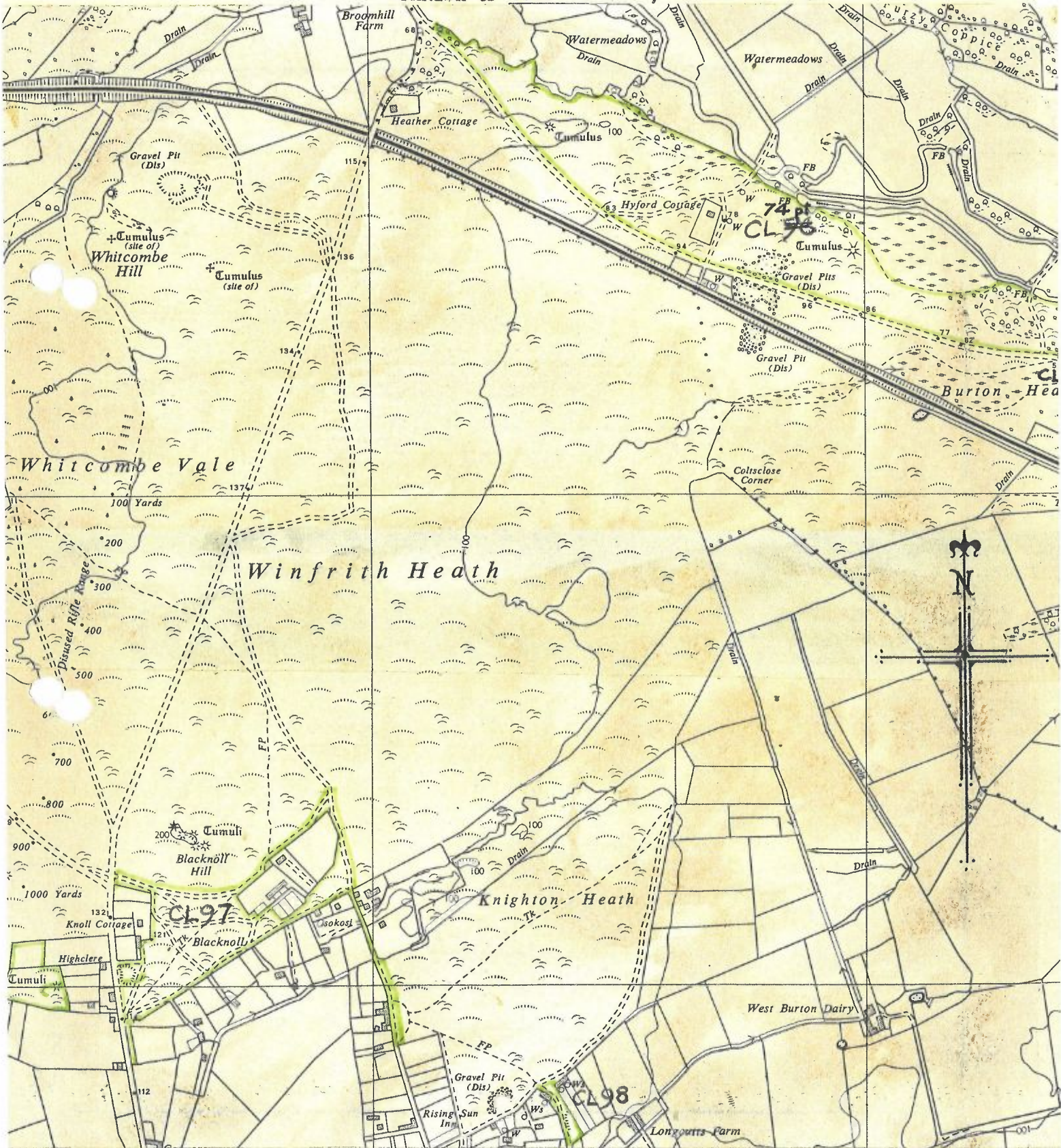
1 <i>No. and date of entry</i>	2 <i>No. and date of application</i>	3 <i>Name and address of every applicant for registration, and the capacity in which he applied</i>	4 <i>Particulars of the right of common, and of the land over which it is exercisable</i>	5 <i>Particulars of the land (if any) to which the right is attached</i>

THE COMMONS REGISTRATION ACT 1965

PROVISIONAL REGISTRATION

DORSET COUNTY COUNCIL

PARISH OF *Wool & Winfrith Newburgh.*



This map is an Extract from Ordnance Survey Sheet No. SY88 NW



DC mapping is based on Ordnance Survey information. Their positional accuracy improvement project has resulted in a discrepancy between their data and that of DC. Please allow for this when interpreting the positional accuracy of features on the plan.

The List of Streets is maintained by Dorset County Council under Section 36(6) of the Highways Act 1980. The routes shown are believed to be publicly maintainable highways but the List may be amended by way of a legal order if additional routes are adopted and/or if evidence is discovered which demonstrates that the routes shown are of a different status. The highway depicted on this plan shows the approximate extent only.

Some of the information shown on this map is based on the Provisional Register Maps of Common Land and Town and Village Greens. It is not definitive

Common Land 98

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 276/3
Date: 29/08/2019
Scale 1:1200
Drawn By: AM
Cent X: 381411
Cent Y: 85690



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The List of Streets is maintained by Dorset Council under Section 36(6) of the Highways Act 1980. The routes shown are believed to be publicly maintainable highway but the List may be amended by way of a legal order if additional routes are adopted and/or if evidence is discovered which demonstrates that the routes shown are of a different status. The highway depicted on this plan shows the approximate extent only.



Some of the information shown on this map is based on the Provisional Register Maps of Common Land and Town and Village Greens. It is not definitive

DC mapping is based on Ordnance Survey information. Their positional accuracy improvement project has resulted in a discrepancy between their data and that of DC. Please allow for this when interpreting the positional accuracy of features on the plan.

COMMON LAND 98

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref:

Date: 06/03/2023

Scale 1:1200

Drawn By: LH

Cent X: 381373

Cent Y: 85750



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**SUMMARY OF REPRESENTATIONS RECEIVED TO THE CONSULTATION,
FURTHER COMMENTS ON THE APPLICANT'S REPLY AND ON ADDITIONAL
EVIDENCE AND ADDITIONAL COMMENTS FROM REPRESENTORS**

OBJECTIONS

Name	Comments
<p>Open Spaces Society (OSS)</p> <p>Representation to consultation</p> <p>Dec 2022</p>	<ul style="list-style-type: none"> • No evidence of any mistake made by commons registration authority in making or amending entry in the register • Legislation did not impose obligation on commons registration authority to give notice of provisional registration to legal owners • Absence of rights of common immaterial as land registered as waste land of manor and not subject to rights of common • Winfrith Heath Act 1957 is “red herring” - purpose of Act was to facilitate development of nuclear research site - extinguishment of rights of common confined to land required for development. • Footpath along west side of application land bounded by rustic fence - appears to lack consent
<p>OSS Further Comments on Applicant's Reply</p> <p>April 2023</p>	<ul style="list-style-type: none"> • Application should be determined in relation to whole of application land • Reiterates no evidence that there is a mistake made by commons registration authority in making or amending an entry in the register. • Nothing in applicant's reply rebuts fundamental flaw in application: no mistake capable of correction under s.19. • Reference to Leigh Common, application made under s.19(2)(a) to deregister alleged highway land, on grounds Dorset County Council wrongly registered land which was granted but later quashed by the High Court. • 1965 Act did not require scrutiny of evidence in support of application to register common land. Parliament required commons registration authorities only to satisfy themselves application ‘duly made.’ • Commons registration authority had no power, or duty, to determine whether application to provisionally register land as common land contained land which did not conform to definition of common land • Land subject to rights of common / waste land of a manor could not be excluded. • As contested in Leigh Common case, land perceived to be highway could not be excluded. • Ministry of Land and Natural Resources Circular 4/66 stated: <p style="margin-left: 40px;">An application which is not prima facie invalid...should be accepted for provisional registration even if the registration authority considers it to be ill-founded or of doubtful merit.</p>

	<ul style="list-style-type: none"> • Contests Applicant's suggestion that OSS unlikely to go to expense of making any further challenge • OSS also refers to applicant's position on fencing of Common Land but notes that this is not relevant to determination of application.
<p>OSS Comments on Applicant's Additional Evidence May 2023</p>	<ul style="list-style-type: none"> • Not necessary to consider new evidence. Application made for the purpose of a S19(2)(a) of the Commons Act 2006 – applicant must show commons registration authority made a mistake in making or amending an entry in the register. • Regardless of evidence that may show application was or was not manorial waste at the time of registration, no mistake made by registration authority.
<p>OSS Additional Comments June 2023</p>	<ul style="list-style-type: none"> • Effect of s.10 of Commons Registration Act 1965 is that land conclusively common land. Common land is defined in s.22(1) of 1965 Act, and as land not subject to any registered rights of common must conclusively be waste land of the manor • Application under s.19 of 2006 Act, must show evidence of a mistake made by commons registration authority. • Evidence of land being waste prior to provisional registration is irrelevant for purposes of application, because commons registration authority not required to adjudicate on whether application well-founded.
<p>Steve Byrne Representation to consultation Dec 2022</p>	<ul style="list-style-type: none"> • Section 19(2)(a) of 2006 Act concerned solely with copying or transcription errors. Question is not whether registration authority 'made a mistake' in registering a particular area of land as common land but whether land wrongly registered as result of a copying or transcription error. • If land should never have been registered this is not kind of mistake that can be corrected under s.19(2)(a) of the 2006 Act • Application refers to certificate from Dorset County Council dated 8 May 1986 showing the land was not registered as common land not included in application but instead a search dated 2019 showing land registered as common land. • Misunderstanding on the part of the applicant of the 1965 Act definition of 'common land'; and perhaps refusal to acknowledge 'waste land of a manor not subject to rights of common' as a part of that definition. • Refers to a previous s.19(2)(a) Dorset Council case – Leigh Common (CLD2017/1) in which argument that commons registration authority had been obliged to register land, and therefore did not 'make a mistake' in doing so was acknowledged and accepted by Dorset Council.

<p>Steve Byrne Further Comments On Applicant's Reply</p> <p>April 2023</p>	<ul style="list-style-type: none"> • Reiterates that application cannot be made under section 19(2)(a); because s.19(2)(a) does not cover applications of this kind and scope. • In response to the Applicant's assertion that the objectors offer no justification for restrictions on <i>Section 19(2) of the 2006 Act</i>, Mr Byrne refers back to his Representation; giving Leigh Common as an example, the CRA were obliged to register the land and therefore did not make a mistake in doing so. This argument was accepted by Dorset County Council. • The broader kind of 'mistake' claimed by Mr Shakesby is covered by Schedule 2 of the 2006 Act ('Non-registration or mistaken registration under the 1965 Act').
<p>Steve Byrne Comments on Applicant's Additional Evidence</p> <p>May 2023</p>	<ul style="list-style-type: none"> • No need to add to representations already made.
<p>Steve Byrne Additional Comments June 2023</p>	<ul style="list-style-type: none"> • Has already shown conclusively in previous submission that this is not a valid s.19(2)(a) application and should be rejected. Has seen nothing from applicant in response to this argument.
<p>British Horse Society (BHS)</p> <p>Representation to consultation</p> <p>Dec 2022</p>	<ul style="list-style-type: none"> • The BHS assert that there is no evidence of a mistake by the CRA in making or amending an entry in the register. • The BHS support comments made by OSS • They also draw the council's attention to lack of consent for the fence.
<p>Reinmar and Gabriele du Bois, Local residents</p> <p>Representation to consultation</p> <p>Jan 2023</p>	<ul style="list-style-type: none"> • Neighbouring landowners since 1992 with interest in historic context of neighbourhood. • Common land previously accessible through gate the north end of their property, but gate has fallen into disrepair. • Keen interest that common land is upheld • At its best land used to serve as small "village green" for surrounding properties. This function maybe inadvertently been made impossible by partial fencing.

<p>Timothy and Pauline Malins – Local residents</p> <p>Representation to consultation</p> <p>Jan 2023</p>	<ul style="list-style-type: none"> • No evidence to support contention that the land, with its long history as established common land, has ever been classified as anything else, or deregistered. • As neighbouring landowners, believe the common land registration affords best protection to natural beauty and aspect of area. • Query detail of application stating freehold owner of land is Mr Malcolm Shakesby. • Mr Shakesby has actively discouraged use the land. • Restrictive covenant on the land • No evidence of fly tipping or access by travellers in past 14 years. • Disappointed not formally notified of application by Dorset Council.
<p>Timothy and Pauline Malins – Local residents</p> <p>Further Comments On Applicant's Reply</p> <p>April 2023</p>	<ul style="list-style-type: none"> • No relevant information or evidence provided by applicant. • Disputes confusion as to extent of land subject to application. • Applicant has chosen to use section of Act relating to correction of register rather than section which deals with applications to de-register common land. • 1957 Act did not extinguish the application land as a common. • Travellers visit area annually and have not attempted to use land.
<p>Timothy and Pauline Malins – Local residents</p> <p>Comments on Applicant's Additional Evidence</p>	<ul style="list-style-type: none"> • The applicant's representative presents yet another speculative interpretation of the Winfrith Heath Act 1957 as evidence. • Pencil annotations could have been made by anyone at any time. • 1957 Act did not extinguish Knighton Heath as common land.

IN SUPPORT

Name	Comments
Stuart Leakey Local resident Representation to consultation Jan 2023	<ul style="list-style-type: none"> • Affected landowner, supports application as part of common land which he owns has been fenced in for in excess of 20 years and has not been treated as common land during this time. • Queries outcome of application, concerning classification of application land if removed from register, and if application land upheld as common land would owners of the land be required to restore access.
Stuart Leakey Local resident Further Comments On Applicant's Reply May 2023	<ul style="list-style-type: none"> • Applicant requests amendment of proposal to include only own land - Mr Leakey would like section under his ownership removed, echoing argument Mr Shakesby puts forth, adding following: • Countryside Rights of Way Act prohibits public access within 20 metres of a residence – this would prohibit public access across the majority of the land currently registered as common that is owned by Mr Leakey. • Dorset Council have approved a planning application P/HOU/2022/05438 which extends house to include existing outbuildings which under 20 metre rule effectively removes public access to entire northern portion of land registered as Common. • Has owned 1 Gibraltar Cottages for 6 years and aunt owned property 15 year prior to that - during that time land has not been treated as common. • The land subject to covenant in place when sold by Weld Estate limiting its use to agriculture or a garden. The Welds were not aware that it had been entered into Commons Register. • A High Court judgement land was owned by Weld Estate prior to being purchased by Mr Shakesby suggests land cannot be considered as part of historic common Knighton Heath.

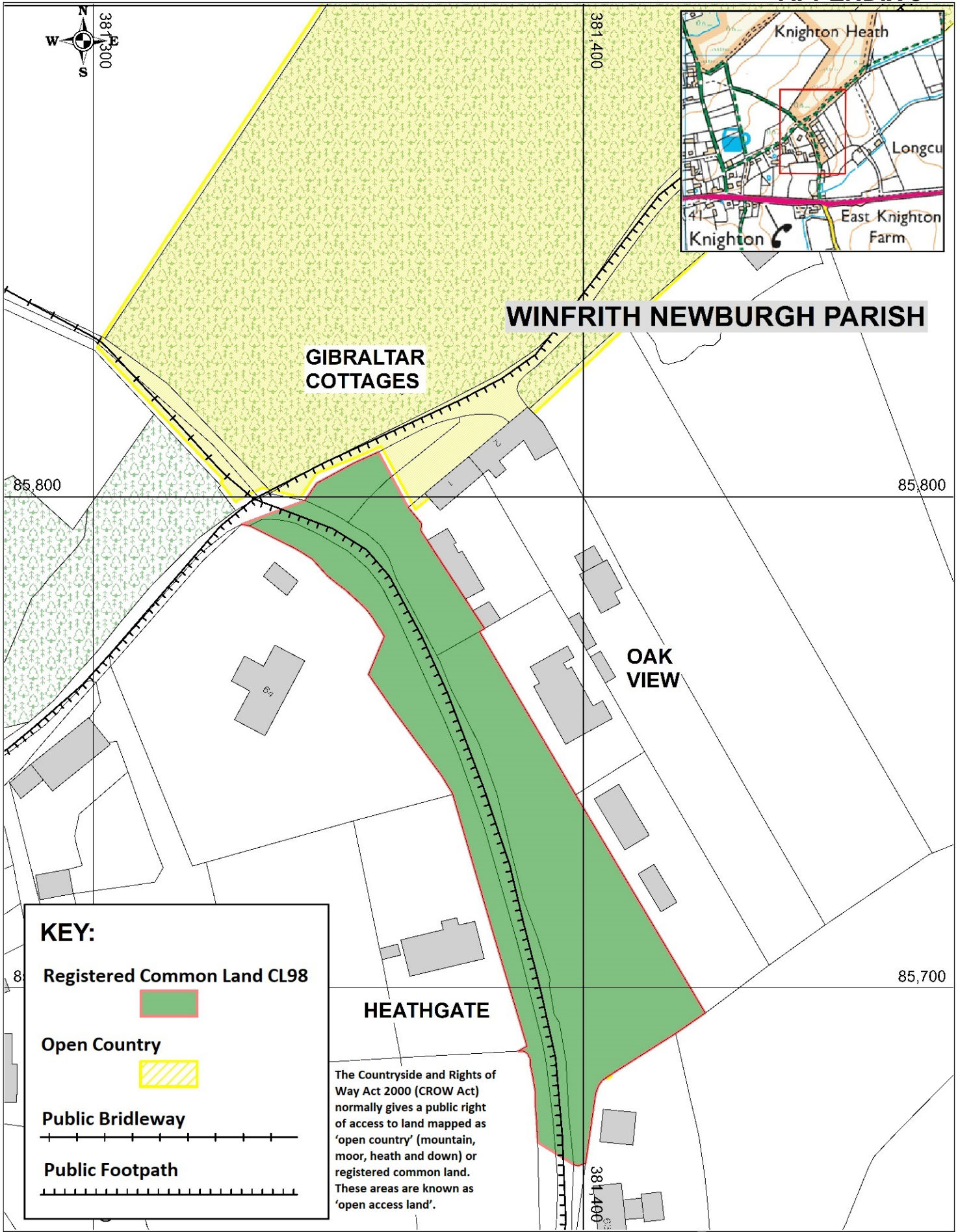
IN SUPPORT OF PART OF APPLICATION

Name	Comments
Sandra Baker and Ken Homer, Local resident	<ul style="list-style-type: none"> • neighbouring landowners -would like verge west of lane to be considered separately - in favour of this being removed from commons register.

<p>Representation to consultation</p> <p>Jan 2023</p>	<ul style="list-style-type: none">• “fenced plot” opposite their property to remain on register to preserve its future as undeveloped green space.• no evidence of fly-tipping or problems with travellers in last 35 years living at Heathgate.
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OTHER REPRESENTATIONS

<p>Winfrith Newburgh Parish Council</p> <p>Representation to consultation</p> <p>Dec 2022</p>	<ul style="list-style-type: none"> • Queries application when matter dismissed by High Court in 1980s. • Queries ownership of application land. • Questions consultation process as neighbour and other freeholders have not been consulted. • Notes that there have never been any fly tipping or traveller problems on this land. Concern regarding private access to properties
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Commons Act 2006. Section 19, paragraph 2 (a)
 Application to correct the register by removing land
 registered as common land, CL98.
 Land at Knighton Common, Winfrith Newburgh
 Application No CLD2022/1

Ref:CLD2022/1/22/1
 Date: 08/11/2022
 Drawn by: CAM
 Scale: 1:1000
 Cent X: 381,379
 Cent Y: 85,775

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SUMMARY OF APPLICANT'S REPLY, ADDITIONAL EVIDENCE AND ADDITIONAL COMMENTS

a) Summary of Applicant's Reply in response to consultation responses – March 2023

The Reply was accompanied by the following bundle of enclosures:

- Updated Plan of Land
 - Plan showing 20m distance from residential dwelling
- Plans
 - Plans appended to Winfrith Heath Act 1957 (x3)
 - 1986 Decision
- Extract of Abstract of Title
- Deed of Covenant 1959
- 1986 Official Search
- Plan re fencing
- Licence to Consent
- Letter from PDC and Tipping Notice
- Notes on Footpath and Map (Gibraltar Cottages)

Introduction

- Application relates solely to land in his own legal ownership

Initial Comments

- No rights of public use or access on the application land
- Majority of land within 20 m of dwellings therefore no public access rights under CROW 2000
- Monica Killingback's application to register land as common did not include any evidence in support of application. Local landowners not directly informed of final registration
- Objections to application inaccurate and misunderstand applicant's position and motivation
- No evidence from representors why Land should not be deregistered

Relevant issues raised by the Objectors:

Section 19(2) of the Commons Act 2006

- Wording of S19(2) of 2006 Act does not impose restriction on nature or type of mistake that can be corrected.
- Objectors' main argument not that no mistake made registering land as common but that the mistake is not in "making or amending an entry in the register" and therefore not appropriate under Section 19(2)(a).
- No evidence that position on commons register correct and should remain as present.
- Rights of common extinguished over adjoining land by Winfrith Heath Act 1957 leaving application land isolated from other common land. Council must have made mistake registering application land as common.
- Only case law referring to S19 is Naylor v Essex CC in which the judge's comments indicated he did not consider a restrictive interpretation was required.
- Council's website does not specify a restriction on type of mistakes that can be addressed by S19 (2)(a) application

Manorial Rights

- Applicant not aware of any manorial rights over Land
- No reference to manorial rights on deeds or conveyance
- Application Land did not fulfil necessary criteria to qualify as waste land of manor
- 1986 Decision made by Commons Commission addressed ownership of Land and indicates land was not unoccupied during relevant period (date of provisional application to register land as common land)

Extinguishment of rights of commons

- Disputes Mr Craddock's statement that extinguishment of rights of commons confined to land required for nuclear research.
- 1959 Deed of Covenant demonstrates that UKAEA took other actions to restrict access outside of the security fence for the nuclear research site

Determination

- Reference to Section 19(5) of the 2006 Act

- No “unfairness” to consider as only the Applicant has had cause to place reliance on register and he does not accept it is correct.

1986 official search

- Certificate of Official Search 1986 from Dorset County Council showed no registered entries on the register of Common Land

Irrelevant points and Factual Errors:

Fencing

- Objections to lack of consent to fence the Land irrelevant.

Other legal owners

- Not intention of Applicant to apply to deregister land not in his ownership

Status of Land and its natural environment

- Representations focus on detrimental effect of de-registration on amenity of surroundings
- Representors do not have requisite knowledge to make comments on fly-tipping, and problems with travellers

Rights of Common

- Objectors’ comments on negative impact of deregistration on rights as local residents misunderstand purpose of application
- No rights of common registered on commons register
- Applicant has granted rights of access to neighbours which will not be affected by application

Public Right of Way

- Public bridleway over adjoining land referred to by Mr and Mrs Du Bois does not affect application
- British Horse Society objecting “for the same of it” – no relevance to its members
- If rights of common has been in existence when Footpath 5 added to Definitive Map no need to add right of way

Concluding Comments

- No evidence to challenge lack of rights of common so no sense for Land to be designated a common

- Land does not border any land subject to rights of common
- Land should not continue to be designated as common when no evidence of rights of common and Land cannot be used as access to other areas with common rights.
- Applicant has corresponded with Council since 1980s and would like certainty on matter.
- Applicant unable to utilise land as he would wish.
- Designation of land as common in 1970 was a mistake and should be removed from Commons Register.

b) Summary of Additional Evidence submitted by Applicant – May 2023

The Additional Evidence was accompanied by the following enclosures:

- Copy of the Winfrith Heath Act 1957 (and accompanying plans)
- Copy of Deed dated 18 November 1957
- Client's archivist has reviewed Winfrith Heath Act 1957 in further detail
- Pencil annotations found on draft version of Winfrith Heath Hill suggested discussion over whether 1957 Act affected all or part of Knighton Heath.
- Clear that Treasury Solicitor drafting 1957 Act was sure that all of Knighton Heath was included in sale and extinguishment of rights of common
- The draftsman of the 1957 Act cannot have considered the Application Land to form part of Knighton Heath otherwise the legislation would have limited the drafting to reflect this position.
- Registration of Application Land as common in 1970 made in error
- Wayleave dated 18 November 1957 includes maps that suggest Estate Terrier altered to separate Land from Knighton Heath. May have been done to reflect a different use of the Land from Knighton Common.

c) Additional Comments in response to Representors' Further Comments (June 2023)

- Reference to Leigh Common case irrelevant to application as situation very different
- No evidence from objectors to back up comments that land must have been registered as waste land of a manor
- Clarify application relates solely to land in Applicant's ownership

d) Additional Comments (July 2023)

- Reiterates that Applicant does not accept or agree with any of points made by OSS regarding scope of process set out under section 19 of Commons Act 2006.
- If OSS are correct in their restrictive interpretation of the section 19 application process, there very little point in registration authorities having a statutory procedure for correcting obvious mistakes made in the registration of land as a common.
- Section 19 process would be entirely redundant in practice if it did not cover situations like this one.
- Unclear what Open Spaces Society stand to gain by their objections to this application. Outcome of the application appears to have limited practical impact upon the people who the Open Spaces Society represent.