



Strategic Planning Committee

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

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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

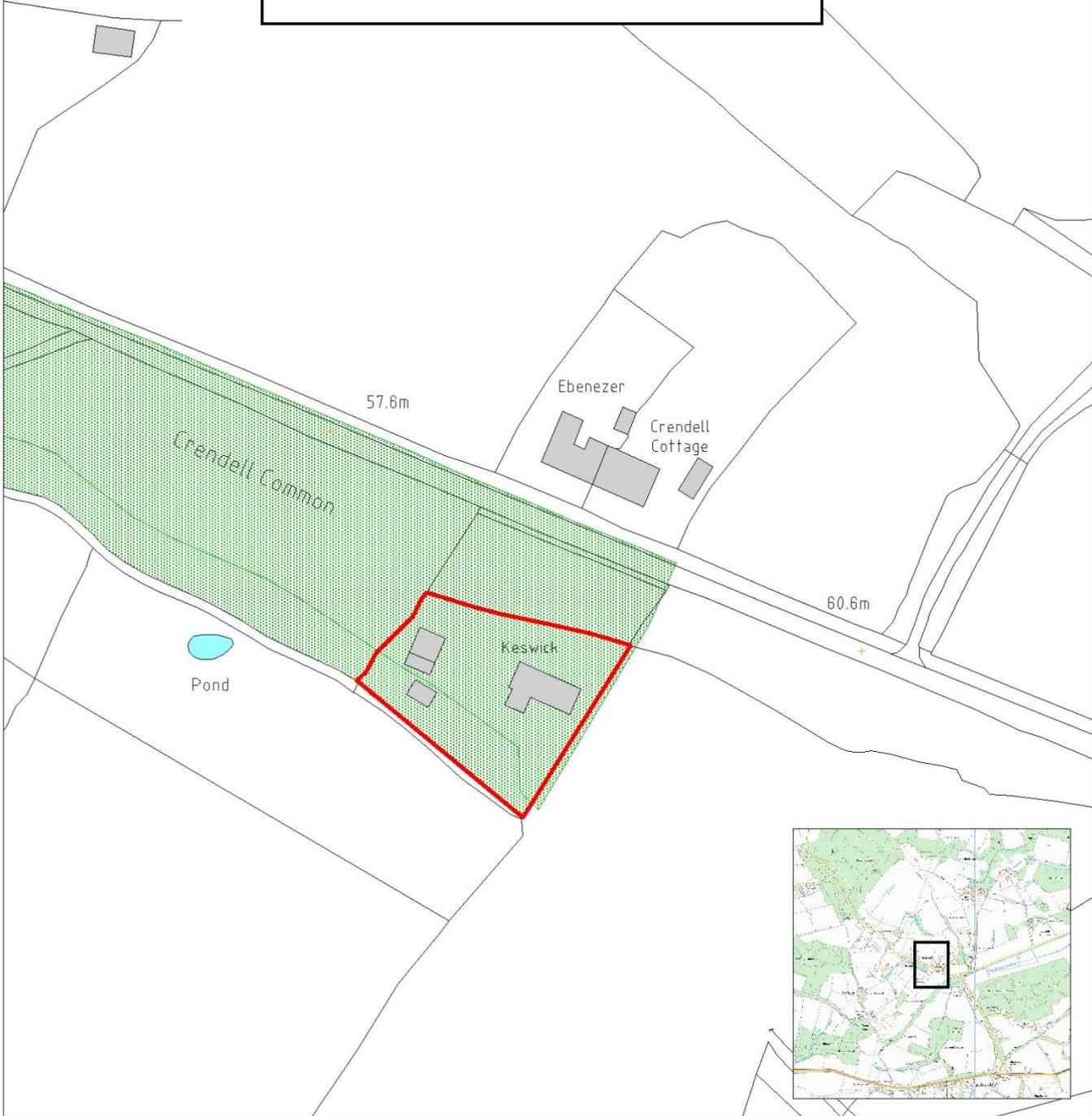
Corporate Director for Economic Growth and Infrastructure

November 2019

Commons Act 2006. Schedule 2, paragraph 6.

Application to deregister a building and land within the curtilage of a building wrongly registered as common land, CL127.

Land at Keswick, Crendell, Alderholt.
Application No. CLD2018/1



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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 Getmapping P o and Bluesky International Limited [2017]

Commons Register Plan extract

Application No. 307

Register Unit No. CL 127

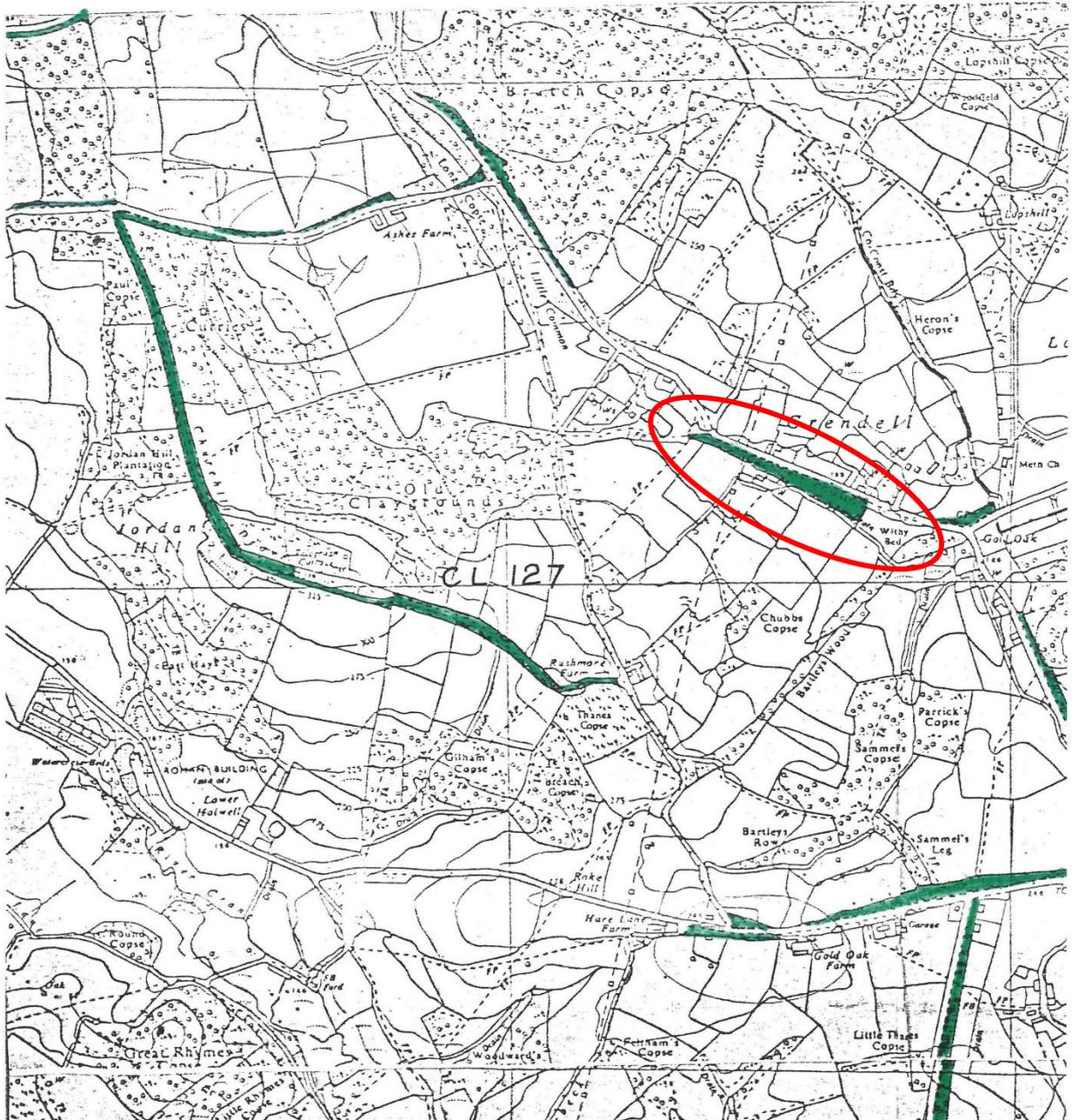
THE COMMONS REGISTRATION ACT 1965

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 MAX 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 Menton
Mr. Messrs. Nevill Chamberlaine
Solicitors
Foresters
Manor of Ash.

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

B. M. Herrington.

Frank Menton