

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 <i>(see entry No. 98/2 below)</i>	<p>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).</p>
<i>98/2 2 November 1971</i>	<p><i>The registration at entry No. 98 above, being undisputed, became final on 1 October 1970</i></p>

No. and date of note	Notes	No. and date of note	Notes
1 <i>21 July 1970</i>	<p><i>No. 662</i> <i>39</i> The application of Mrs M Killingback of <i>29</i>, Stowell Crescent, Wareham, Dorset made 11 December 1969 is noted in respect of the registration at entry No. 98.</p>		

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. |

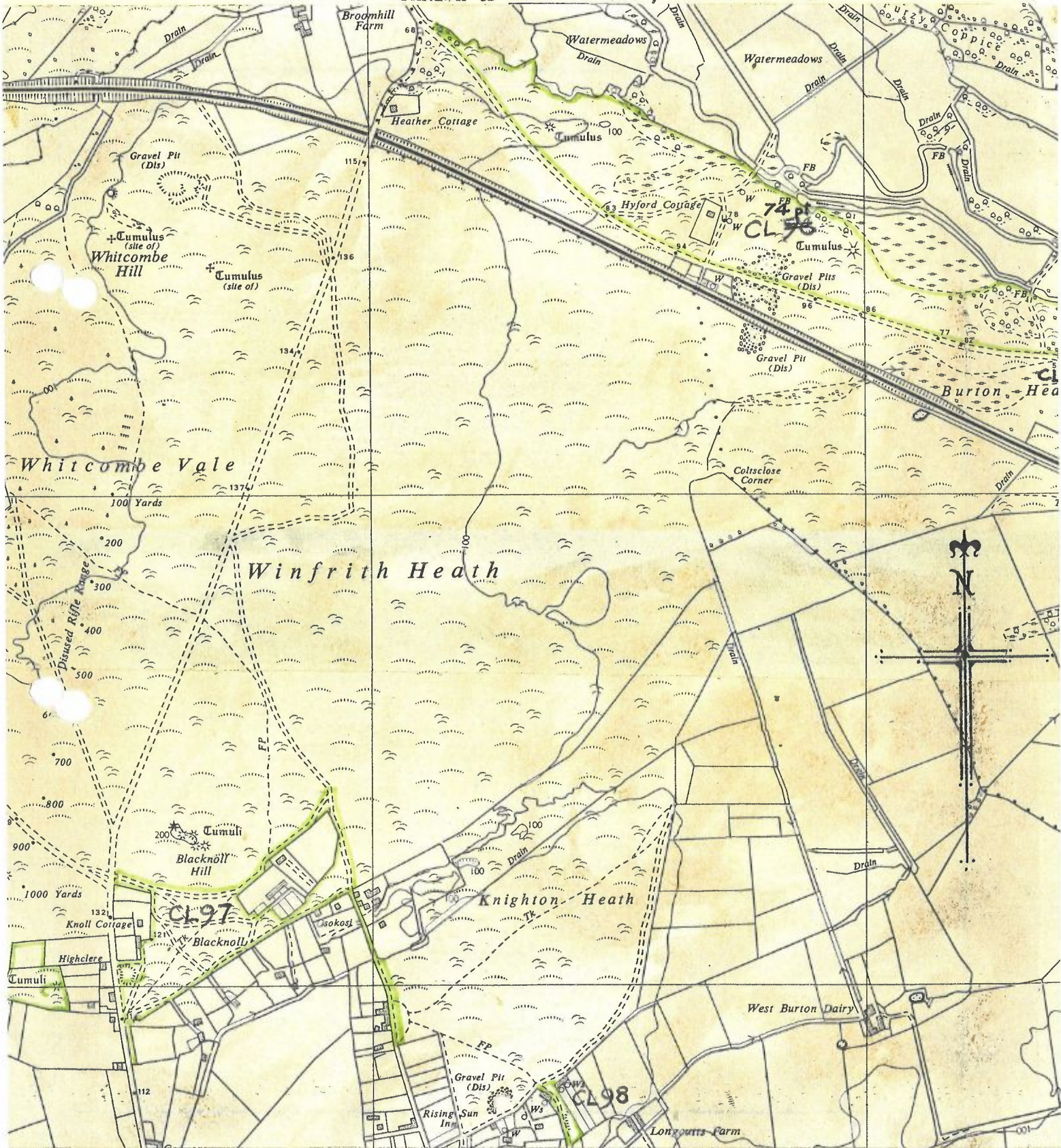
1 <i>No. and date of entry</i>	2 <i>No. and date of application</i>	3 <i>Name and address of every applicant for registration, and the capacity in which he applied</i>	4 <i>Particulars of the right of common, and of the land over which it is exercisable</i>	5 <i>Particulars of the land (if any) to which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

Scale 1:10560

Edition 1963



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 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

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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 Aerial Photography © UKPerspectives 2002 & © Getmapping 2005, 2009 & 2014
 Getmapping Plc and Bluekey International Limited [2017]



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
Open Spaces Society (OSS) Representation to consultation Dec 2022	<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
OSS Further Comments on Applicant's Reply April 2023	<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
<p>Stuart Leakey Local resident</p> <p>Representation to consultation</p> <p>Jan 2023</p>	<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.
<p>Stuart Leakey Local resident</p> <p>Further Comments On Applicant's Reply</p> <p>May 2023</p>	<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.

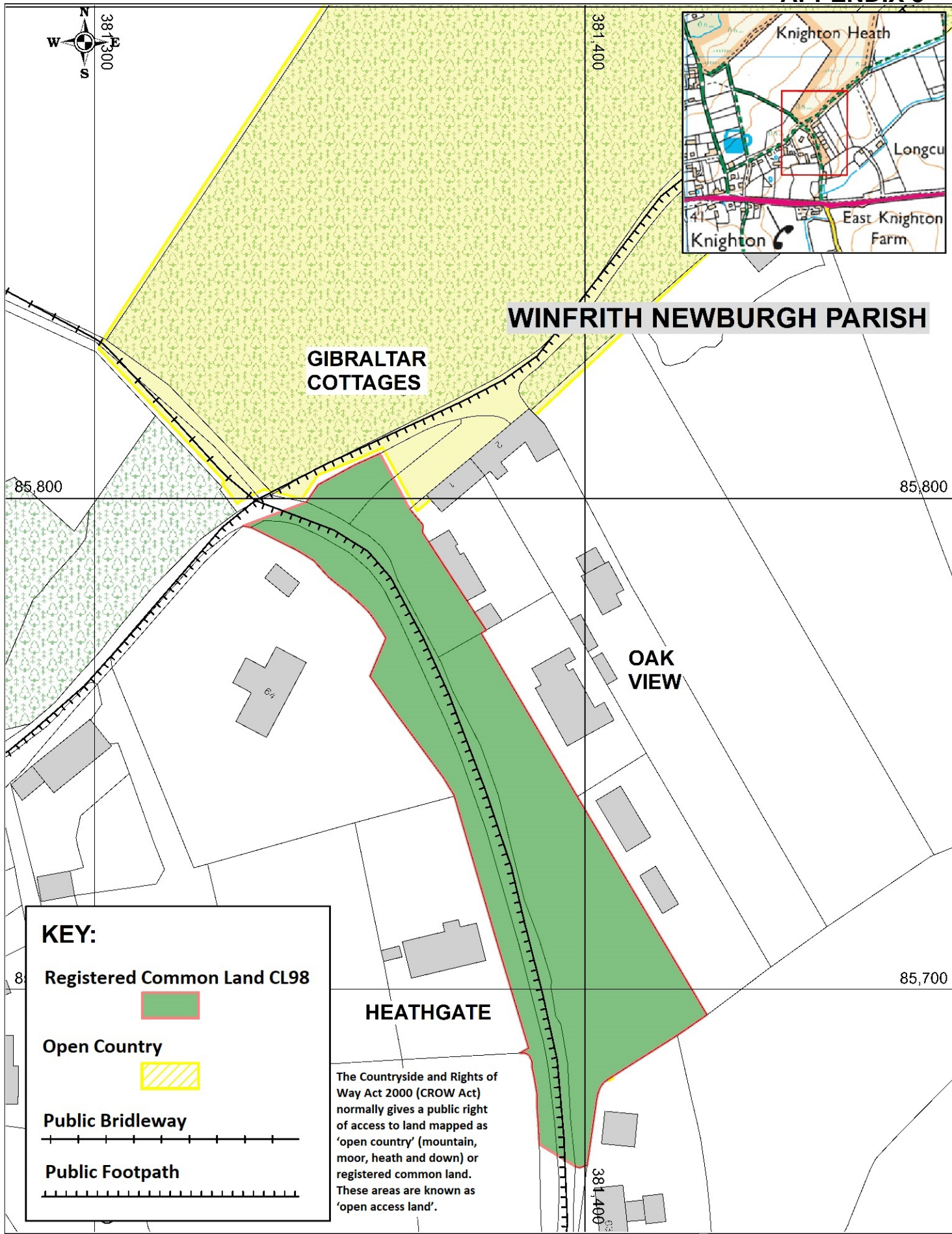
IN SUPPORT OF PART OF APPLICATION

Name	Comments
<p>Sandra Baker and Ken Homer,</p> <p>Local resident</p>	<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.