

Report to: Lauren Haslam, Director Law and Governance
Delegated decision

**APPLICATION TO DE-REGISTER COMMON LAND CL 3 AT
BRIDGE MEADOW, MYTHE FARM, PINWALL LANE, SHEEPY MAGNA,
ATHERSTONE, WARWICKSHIRE CV9 3PF
COMMONS ACT 2006 CA (COM) 01/2016
REPORT OF HEAD OF LAW & TEAM LEADER ENVIRONMENT AND PROPERTY**

Purpose of Report

1. The purpose of this report is to request by way of a delegated decision approval of the application ('the Application') the County Council has received to correct a mistaken registration and to deregister land currently registered as CL3 and described as 'Gravel Hole within the parish of Witherley'.
2. Following changes to the Commons Act 2006 which took effect from 15th December 2014 the County Council as a Commons Registration Authority may now correct mistakes in the registers of common land and town and village greens. This function is delegated to the Director of Law and Governance as follows:
Commons and Village Greens
To the Director of Law and Governance to exercise the functions as registration authority under the relevant legislation in force for the time being in relation to commons and village greens.

Recommendation

3. The application is granted and the Register of Commons be corrected and the land shown registered as CL3 described as the Gravel Hole be removed from the register.

Reason for Recommendation

4. The evidence shows that the land registered as the Gravel Hole pursuant to registration CL3 was in fact the adjoining field to the Gravel Hole known as Bridge Meadow and so was wrongly registered. The Statutory requirements under the Commons Act 2006 with regard to the correction of mistaken registration of land as a common have been satisfied.

Circulation under the local issues alert procedure

5. Mr. I. Ould CC.

Officer to contact

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Background

7. This report concerns land currently registered on the Commons Register with registration CL3 and stated to be 'the Gravel Hole within the Parish of Witherley'. This land is adjacent to land known as Bridge Meadow. The Gravel Hole is owned by

- Witherly Parish Council and Bridge Meadow is owned by the Garland Interest in Possession Trust.
8. On 21st April 2016 Leicestershire County Council as Commons Registration Authority in respect of common land and town and village greens in Leicestershire received an application under Schedule 2 Paragraph 7 of the Commons Act 2006 on Form CA13 from Ms Joanna Garland of Mythe Farm, Sheepy Magna, Atherstone, Warwickshire ('the Applicant') to de-register land wrongly registered as common land. A copy of the application is attached at Appendix 1.
 9. The application relates to a piece of land comprised in the Common Land Register registration CL3 'the Gravel Hole within the Parish of Witherly' shown on the plan at Appendix 2.
 10. The Gravel Hole was provisionally registered as common land on 5th April 1967 under Section 4 of the Commons Registration Act 1965 pursuant to an application made by the Clerk of the Witherley Parish Council. The application was dated 24th March 1967. The provisional registration became final on 1st October 1970.
 11. The applicant claims the application resulted in the wrong piece of land was registered as common land during the registration process.
 12. The applicant claims that the application land registered is in fact land known as Bridge Meadow and is part of Mythe Farm and is not the land known as the Gravel Hole. This happened because for reasons which are not clear the wrong plan was attached to the application and while referring to land described as the Gravel Hole the plan was in fact of Bridge Meadow. Accordingly while the register entry referred to the Gravel Hole the plan on the register was of Bridge Meadow.
 13. The following evidence has been submitted by the Applicant with the Application:
 - Copy of original registration of CL3
 - Copy of Commons Register plan of CL3
 - Plan of Bridge Meadow
 - Plan of the Gravel Hole
 - Application from Witherley Parish Council plus plan to Leicestershire County Council for registration as the Gravel Hole as common land dated 24th March 1967
 - Epitome of title of Bridge Meadow -copy conveyance deeds of land being part of Mythe Farm showing Bridge Meadow dated 27th June 1933, 22nd March 1966 and 23rd July 1976
 - 1858 plan of 'the Gravel Hole for the poor of Ratcliffe Culey'
 - A statement from Chartered Surveyor Keith Parsley with regard to details of annual auctions he had undertaken with regard to grazing rights on the Gravel Hole
 - Extracts from the Ratcliffe Culey Lane Setting Book
 - A letter from Leicestershire County Council's County Solicitor dated 4th February 2008.
 14. Following receipt of the Application correspondence ensued between the County Council and the Applicant with regard to the requirement to comply with the Commons Act 2006 and the Commons Registration (England) Regulation 2014 ('the 2014 Regulations'). On 17th October 2016 the Application was deemed to have been duly made and certified as such and notice of the application was advertised on the County Council's website and on the site of the application land. The notice was also sent to all the interested parties in accordance with Schedule 7 of the 2014 Regulations. The notification referred to was to ensure that any person wishing to submit representations with regard to the Application was aware that the time limit to do this ran until the 4th January 2017 and any representations had to be in writing.
 15. No objections were received during the notice period.
 16. Following the conclusion of the representation period however the Open Spaces Society (OSS) contacted the County Council with regard to current village green or

commons registrations it was considering and it was brought to the attention of the Head of Law that a previous request from the OSS that they be notified with regard to applications made with regard to commons or village greens had inadvertently been overlooked. Accordingly it was decided that the OSS were entitled to make representations and those representations were received on 22nd March 2017.

17. As a result of the representations received from the OSS it was necessary to seek a response from the Applicant. The Applicants response was received on the 24th May 2017 and the following consideration of the response the Head of Law engaged in further correspondence with the OSS with regard to the information provided by the Applicant and the requirements of the Regulations.
18. Operational and other pressures of work have meant that there has been a delay in consideration of all the information the County Council had received. An apology has been given to the Applicant.

The Law

19. Part 1 of the Commons Act 2006 ('the Act') came into force on the 15th December 2014 and allows applications to be made to amend the registers of commons and village greens in appropriate circumstances.
20. The Application is made under Schedule 2 Paragraph 7 of the Act which states:
'Other land wrongly registered as common land'
7(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 the land from its register of common land.
(2) This paragraph applies to the land where
 - a) The land was provisionally registered as common land under Section 4 of the 1965 Act;*
 - b) The provisional registration of the land as common land was not referred to a commons commissioner under Section 5 of the 1965 Act*
 - c) The provisional registration became final and*
 - d) Immediately before its provisional registration the land was not any of the following;*
 - i. Land subject to rights of common*
 - ii. Waste land of a manor*
 - iii. A town or village green within the meaning of the 1965 Act has originally enacted or*
 - iv. Land of a description specified in Section 11 of the Enclosure Act 1845*

Application of the law to the facts and evidence of the Application

21. The Application complies with the formal requirements as to form and content contained in the 2014 regulations
22. The statutory criteria as set out above are considered in relation to the application as follows:
 - a) The land was provisionally registered as common land under Section 4 of 1965 Act.**
The Application Land was as previously stated provisionally registered as common land under registration CL3 under Section 4 Commons Regulation Act 1965 pursuant to application number 12. This element of the criteria is satisfied.
 - b) The provisional registration of the land as common land was not referred to a commons commissioner under Section 5 of the 1965 Act.**

The provisional registration was not referred to a Commons Commissioner under Section 5 of the Commons Regulation Act 1965. This element of the criteria is satisfied.

c) The provisional registration became final;

The provisional registration became final on 1st October 1970. This element of the criteria is satisfied.

d) Immediately before its provisional registration the land was not any of the following –

i. Land subject to rights of common

The conveyances relating to Bridge Meadow dated 27th June 1933, 22nd March 1966 and 23rd July 1976 make no reference to Bridge Meadow being a common or subject to rights of common but being in private ownership. In particular the conveyance dated 27th June 1933 states that 'the 'property' was sold as fee simple in possession free from encumbrances. That description is also used in the 22nd March 1966 and 23rd July 1976 conveyances.

Additional evidence that Bridge Meadow was not subject to rights of common was also provided in the letter from the County Solicitor to the Applicant dated 4th February 2006 which referred to an earlier meeting that took place in County Hall on 6th September 1996 attended by the Applicant, Mrs Grubb the then Chairman of the Witherley Parish Council and a County Council Solicitor John Prendergast. It was recorded at that meeting that amongst documentation that had been produced was the following:

'A plan showing Mythe Cottage Farm in 1858 which included the land currently registered as common land as being part of the farm but the field adjacent to it being field numbers 0048 and 00951 as 'land allotted for the poor of the parish'

The notes of the 1996 meeting also recorded that 'land allotted for the poor of the parish' has always been treated by the Parish Council as being Parish land in the Council's ownership and being available for letting for grazing purposes'.

Field numbers 0048 and 00951 now comprise the land is in fact now known as the Gravel Hole (see plan at Appendix 3).

In addition the 1767 Ratcliffe Culey Inclosure Act ('the 1767 Act') states that 'and we do hereby award order direct and appoint that from and immediately after the execution of these presents all Rights of Common belonging to or claimed by all and every or any of the owners proprietors or occupiers of the lands tenements or other hereditaments within the Lordship or Liberty of Ratcliffe Culey for said in over and upon all and every fields meadows and commons within the said Lordship or Liberty and every part thereof shall cease, determine and be forever extinguished'.

Accordingly the Inclosure Act effectively extinguished any common land within the parish so neither Bridge Meadow or indeed the Gravel Hole could technically have been common land subject to rights of common when Bridge Meadow was incorrectly registered in 1967.

Accordingly it is reasonable to assume on the balance of probabilities that Bridge Meadow was not subject to any rights of common and this element of the criteria is satisfied.

ii. Waste land of the Manor

Bridge Meadow is not waste land of the manor. Bridge Meadow was not waste land prior to the incorrect application for registration and in both the 1933 and 1966 conveyances was described as being 'pasture'.

Additionally the 1767 Act describes what is now known as 'Bridge Meadow' as adjoining the Gravel Hole and 'an ancient enclosed meadow of the said Richard Vincent called the gravel pit meadow'. It is noted that the surrounding field names correspond to the 1858 plan.

Accordingly on the balance of probabilities Bridge Meadow did not comprise waste land of the manor and this element of the criteria is satisfied.

iii. A town or village green within the meaning of the 1965 Act as originally enacted

Bridge Meadow is not shown in the register of town and village greens. Accordingly Bridge Meadow is not a town or village green within the meaning of the 1965 Act as originally enacted and this requirement of the criteria is satisfied.

iv. Land of the description specified in Section 11 of the Inclosure Act 1845.

Section 11 of the Inclosure Act covers the following land:

'All such lands as are herein after mentioned (that is to say) all lands subject to any rights of common whatsoever and whether such rights may be exercised or enjoyed at all times or may be exercised or enjoyed only during limited times seasons or periods or be subject to any suspension or restriction whatsoever in respect of the time of the enjoyment thereof; all dated and stinted pastures in which the property of the soil or of some part thereof is in the owners of the cattle gates or other gates or stints, or any of them; and also all gated and stinted pastures in which no part of the property of the soil is in the owners of the cattle gates or stints, or any of them; all land held, occupied or used in common, either at all times which are in any time or season or periodically, and either for all purposes or for any limited purpose, and whether the separate parcels have the several owners of the soil shall or shall not be known by metes or bounds or otherwise distinguishable; all land in which the property or right of or to the vesture or herbage, or any part thereof, during the whole or any part of the year, or the property right of or to the wood or underwood growing and to grow thereon, is separated from the property of the soil; and all lot meadows and other lands the occupational enjoyment of the separate lots or parcels of which is subject to interchange among the respective owners in any known cause of rotation or otherwise shall be land subject to the enclosed under this act'.

Reference to Section 11 is a catch all to cover land that had the characteristic of common land e.g.' subject to stinted grazing, was regulated pasture or held in undivided shares. The evidence of the 1767 Act is conclusive that Bridge Meadow was not common land. Accordingly this element of the criteria is satisfied.

Overall Assessment

23. The representations from the OSS were with regard to ensuring that the Application was considered in accordance with the strict and relevant statutory criteria. It must then be noted that the incorrect registration was not an error made by the County Council but rather by the original applicant in not ensuring that the correct plan was attached. From the notes made at the 1996 meeting it appears that in the original registration process undertaken in 1967 the County Council's accepted the plan submitted of the land that was to be registered as common land as being correct. Subsequent to the registration there does not appear to be any correspondence alerting the County Council to the fact that the wrong piece of land had been

registered until the applicant was in touch with the County Council firstly in September 1996 and then thereafter in February 2008 which resulted in the applicant drafting an application under Section 19 of the Act. That application however was not formalised until the Application was submitted in 2016.

24. Schedule 2 Paragraph 7 of the Act deals with land wrongly registered as common land. Section 19 of the Act deals with correction of the register. Examination of the totality of the information submitted by the Application shows that the plan submitted with the original application for registration of land as common land was the wrong one- it was in fact the adjacent field known as Bridge Meadow. Schedule 2 Paragraph 7 therefore applies.
25. The Application has been advertised as previously stated on the County Council's website and onsite. Copies of the Application have been sent to all interested parties. No objections have been made. Witherley Parish Council supports the Application and raises no objection.
26. The County Council has delegated the decision making in respect of Commons Act applications to the Director of Law and Governance. This delegation is subject to consideration being given as to whether the circumstances of an application and/or representations received are such that the decision should be taken at Member level by the Council's Development and Regulatory Control Board (DCRB). In respect of this Application no issues arise that require a DCRB decision. The local Member supports a delegated decision.
27. The applicants supporting information submitted with the application and additional information requested following the representations of OSS has been evaluated and on the balance of probabilities it is considered that the Application complies with the statutory criteria previously set out and can be granted.

Recommendation

28. The application is granted and the land known as Bridge Meadow wrongly described as the Gravel Hole and registered as CL3 be removed from the Register of Commons.

Financial implications

29. Applications to correct mistaken registrations are subject to a statutory fee and according £1000 was paid by the Applicant in accordance with the Regulations. As the decision being requested is a formal decision it is therefore subject to a possible judicial review. Given that there have been no objections it is considered that the risk of a judicial review is minimal.

Equality and Human Rights Implications

30. There are no such implications arising from this report.

Background Papers

Appendix 1 - Application CA (Com) 01/2016
Appendix 2 - Plan – CL 3
Appendix 3 - Plan of Parish Land- The Gravel Hole

Decision of Director of Law and Governance:

I approve/~~do not approve~~ the recommendation

Lauren Haslam

Lauren Haslam Director of Law and Governance
Leicester County Council
29 December 2017

