

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Jonathan Woods – Countryside Strategic Manager
Date:	3 March 2025
Title:	Application to register 80 Acres, Headley, as common land Commons Registration Act 1965

Contact name: Harry Goodchild – Definitive Map Team Manager

Email: harry.goodchild@hants.gov.uk

Purpose of this Report

1. The purpose of this report is to recommend whether to accept an application to add land adjacent to Broxhead Common, in the parish of Headley, on the register of common land.

Recommendation

2. That the application to register the land (shown edged red on the plan appended to this report) as common land be refused.

Executive Summary

3. Hampshire County Council is the Commons Registration Authority (CRA) for the purpose of exercising functions under the Commons Registration Act 1965 and the Commons Act 2006. One such function is the determination of applications made to amend the register of common land.
4. The County Council has received a letter from the legal representatives of Mrs Maureen Comber ('the Applicant'), seeking the addition of an area of land known as 'the 80 Acres' to the register of common land. The letter advances an argument that the County Council can effect this amendment under the provisions of the Commons Registration Act 1965, the majority of which was repealed via the passing of the Commons Act 2006.
5. The County Council has taken legal advice on the validity of the Applicant's submissions and has also provided the majority landowner the opportunity to respond. Having had regard to this, it is considered that there is no lawful basis for the application to be accepted, and it is therefore recommended that the application be refused.

Legal framework for the decision

COMMONS REGISTRATION ACT 1965

1 Registration of commons and town or village greens and ownership of and rights over them:

- (1) There shall be registered, in accordance with the provisions of this Act and subject to the exceptions mentioned therein,—
- (a) land in England or Wales which is common land or a town or village green;
 - (b) rights of common over such land; and
 - (c) persons claiming to be or found to be owners of such land or becoming the owners thereof by virtue of this Act;

and no rights of common over land which is capable of being registered under this Act shall be registered under the Land Registration Acts 1925 and 1936.

- (2) After the end of such period, not being less than three years from the commencement of this Act, as the Minister may by order determine—
- (a) no land capable of being registered under this Act shall be deemed to be common land or a town or village green unless it is so registered; and
 - (b) no rights of common shall be exercisable over any such land unless they are registered either under this Act or under the Land Registration Acts 1925 and 1936.

2 Registration authorities

- (1) The registration authority for the purposes of this Act shall be —
- (a) in relation to any land situated in any county or county borough, the council of that county or county borough; and
 - (b) in relation to any land situated in Greater London, the Greater London Council;

except where an agreement under this section otherwise provides.

- (2) Where part of any land is in the area of one registration authority and part in that of another the authorities may by agreement provide for one of them to be the registration authority in relation to the whole of the land.

3 The registers

- (1) For the purpose of registering such land as is mentioned in section 1(1) of this Act and rights of common over and ownership of such land every registration authority shall maintain—
- (a) a register of common land; and
 - (b) a register of town or village greens;

and regulations under this Act may require or authorise a registration authority to note on those registers such other information as may be prescribed.

- (2) Any register maintained under this Act shall be open to inspection by the public at all reasonable times.

4 Provisional registration

- (1) Subject to the provisions of this section, a registration authority shall register any land as common land or a town or village green or, as the case may be, any rights of common over or ownership of such land, on application duly made to it and accompanied by such declaration and such other documents (if any) as may be prescribed for the purpose of verification or of proving compliance with any prescribed conditions.
- (2) An application for the registration of any land as common land or as a town or village green may be made by any person, and a registration authority—
 - (a) may so register any land notwithstanding that no application for that registration has been made, and
 - (b) shall so register any land in any case where it registers any rights over it under this section.
- (3) No person shall be registered under this section as the owner of any land which is registered under the Land Registration Acts 1925 and 1936 and no person shall be registered under this section as the owner of any other land unless the land itself is registered under this section.
- (4) Where, in pursuance of an application under this section, any land would fall to be registered as common land or as a town or village green, but the land is already so registered, the registration authority shall not register it again but shall note the application in the register.
- (5) A registration under this section shall be provisional only until it has become final under the following provisions of this Act.
- (6) An application for registration under this section shall not be entertained if made after such date, not less than three years from the commencement of this Act, as the Minister may by order specify; and different dates may be so specified for different classes of applications.
- (7) Every local authority shall take such steps as may be prescribed for informing the public of the period within which and the manner in which applications for registration under this section may be made.

22 Interpretation

- (1) In this Act, unless the context otherwise requires, “common land” means—
 - (a) land subject to rights of common (as defined in this Act) whether those rights are exercisable at all times or only during limited periods;
 - (b) waste land of a manor not subject to rights of common.

COMMONS ACT 2006

Schedule 2, paragraph 4

- (1) If a commons registration authority is satisfied that any land not registered as common land or as a town or village green is land to which this paragraph applies, the authority shall, subject to this paragraph, register the land as common land in its register of common land.
- (2) This paragraph applies to land which at the time of the application under sub-paragraph (1) is waste land of a manor and where, before the commencement of this paragraph –
 - (a) the land was provisionally registered as common land under section 4 of the 1965

Act;

- (b) an objection was made in relation to the provisional registration; and
- (c) the provisional registration was cancelled in the circumstances specified in subparagraph (3), (4) or (5).

(3) The circumstances in this sub-paragraph are that–

- (a) the provisional registration was referred to a Commons Commissioner under section 5 of the 1965 Act;
- (b) the Commissioner determined that, although the land had been waste land of a manor at some earlier time, it was not such land at the time of the determination because it had ceased to be connected with the manor; and
- (c) for that reason only the Commissioner refused to confirm the provisional registration.

(4) The circumstances in this sub-paragraph are that–

- (a) the provisional registration was referred to a Commons Commissioner under section 5 of the 1965 Act;
- (b) the Commissioner determined that the land was not subject to rights of common and for that reason refused to confirm the provisional registration; and
- (c) the Commissioner did not consider whether the land was waste land of a manor.

(5) The circumstances in this sub-paragraph are that the person on whose application the provisional registration was made requested or agreed to its cancellation (whether before or after its referral to a Commons Commissioner).

(6) A commons registration authority may only register land under sub-paragraph (1) acting on–

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

DEFRA Guidance

'Part 1 of the Commons Act 2006: Guidance to commons registration authorities and the Planning Inspectorate – December 2014'

"Commons registration authorities: maintain registers of commons and greens: How to find out which sort of commons registrations authority you are and how you must maintain your registers" – November 2015'

RELEVANT CASE LAW

Box Parish Council v Lacy ('Re Box Hill Common') - 1977

It was held that land could not be registered under the provision of Section 22(1)(b) of the 1965 Act ('waste land not subject to rights of common') if that land had previously been severed from the manor.

Hampshire County Council v Milburn ('Millburn') 1991

The House of Lords overturned *Re Box Hill Common*, holding that the severance of land from the manor did not result in the land ceasing to be common land for the purposes of the 1965 Act, remaining manorial waste and therefore capable of registration under the relevant heading.

Description of the Land (please refer to Location Plan)

6. The land which is the subject of the application ('the Application Land') comprises a large parcel of land known as 'the 80 Acres', situated to the east of the A325 Sleaford to Lindford Road and Broxhead Common (CL147), and to the south of Picketts Hill, in the Parish of Headley.

Background to the Application

7. As some of the provisions of the Commons Act 2006 have yet to be enacted in all parts of England and Wales, there exists a three-tiered system under which different parts of the legislation are in force in different areas. In England, it has been implemented differently for seven 'pioneer authorities', two '2014 authorities', and the rest of the country (so-called 1965 authorities). Hampshire County Council is a 1965 authority, and so is one of many authorities for which significant parts of the 2006 Act are not operational. This includes the ability to apply to add previously unregistered common land (Schedule 2, Paragraph 2) and manorial waste (Schedule 2, Paragraph 4) to the register – such applications cannot be processed in Hampshire. As a result, in Hampshire only applications which seek to correct historic mistakes (under the provisions of Section 19(2)a and Schedule 2, Paragraphs 6-9) are permitted.
8. The Applicant has made a number of applications in recent years to register various areas of land, on or near Broxhead Common, as common land.
9. **Application No. 01/17** related to the 80 Acres and was made on 6 July 2017. It was made under section 19(2)(a) of the Commons Act 2006 (the "2006 Act") to correct a mistake allegedly made by the Council as commons registration authority in removing the 80 Acres from the register of common land. The application was referred to the Planning Inspectorate and determined on paper. On 29 November 2019, the Planning Inspector (Mr Martin Elliott) refused the application (reference no. COM/3219561). On 25 February 2020, the Applicant issued proceedings in the High Court seeking judicial review of the Inspector's decision. Permission to bring proceedings for judicial review was refused by Thornton J on 5 May 2020. The Applicant renewed their application for permission at an oral hearing, and at that hearing permission was again refused by Lieven J on 23 July 2020.
10. **Application Nos. 01/18 and 05/18** related to land at Baigents Hill and Picketts Hill respectively and were made on 18 November 2017 and 28 September 2018. They were made under section 19(2)(a) of the 2006 Act to correct a mistake allegedly made by the Council as commons registration authority in failing to register certain areas of land as common land. The applications were referred to the Planning Inspectorate and were the subject of a two-day public hearing in May 2023. On 4 July 2023, the Planning Inspector (Ms Joanne Burston) refused the applications

(reference nos. COM/3300564 and COM/3300566). There was no application for judicial review in relation to either application.

11. The current Application ('the Application', see Appendix 1) seeks to register the 80 Acres as common land pursuant to sections 1 to 3 of the Commons Registration Act 1965 (the "1965 Act"). The accompanying letter from the Applicant's solicitors asserts that "*in the light of its unusual circumstances we believe that this registration can be effected without undue delay or expense*"¹. The letter adds that the conclusion that the 80 Acres are common land "*is based on developments in the law since 1990 and, crucially, on current DEFRA practice which may not be widely appreciated*" and that "*This conclusion is not affected by the determinations made in 2023 by a planning inspector or by the litigation history between [the Applicant] and HCC ... and which do not effect or prevent this application or its consideration as they were made on a different basis*"².

12. The basis for the Application is as follows:

- a) In 1968, the Council provisionally registered the 80 Acres as common land. The Council did so of its own volition (as it was entitled to do under section 4(2)(a) of the 1965 Act). The registration was opposed and therefore in the normal way it was referred (under sections 5 and 6 of the 1965 Act) to a Commons Commissioner for determination.
- b) At the inquiry in 1974 before the Chief Commons Commissioner (Mr G.D. Squibb QC), the Council's argument that the 80 Acres should be registered as common land was based on two separate contentions³:
 - (i) That the land fell within the definition of "*common land*" in section 22(1)(a) because it was subject to rights of common; alternatively
 - (ii) That the land fell within the definition of "*common land*" in section 22(1)(b) because it was manorial waste not subject to rights of common
- c) The Chief Commons Commissioner dismissed the second of these arguments on the basis that there was "*no substance in the alternative contention that the land to the east of the Sleaford-Lindford road is manorial waste, for it is not and has not at any material time been in the same ownership as any part of the lordship of the Manor, but for the reasons to be given in my [second decision] I have been satisfied that this land is subject to rights of common.*"⁴ It is contended by the Applicant that, as the Chief Commons Commissioner decided the case based on the separation of the ownership of the land and the ownership of the lordship of the manor, he decided the matter on an erroneous basis (as was subsequently held in *Millburn*).
- d) The Applicant states that, if the Council were a pioneer authority, this is a mistake which could now be corrected by the Council under the express power to do so contained in Schedule 2, Paragraph 4 to the 2006 Act ('*waste land of a*

¹ Letter from Knights of 9 August 2024, page 1

² Letter from Knights of 9 August 2024, pages 1-2

³ Chief Commons Commissioner's Decision No. 1 of 22 November 1974, page 1, paragraph 4

⁴ Chief Commons Commissioner's Decision No. 1 of 22 November 1974, page 1, paragraph 5

manor not registered as common). Notwithstanding that the Council is not a pioneer authority, the Applicant contends that this is still a mistake which can now be corrected by way of a fresh application to the Council under the provisions of the 1965 Act on the strength of the *Millburn* case, and by the Council granting that application.

13. The County Council has sought legal advice as to the merits of the Applicant's submissions. It also afforded the affected landowner an opportunity to comment, and they subsequently submitted an objection through their solicitor ('the Objector') - this submission can be viewed at Appendix 2.

Issues to be decided

14. Officers broadly agree with the description in the Applicant's submissions relating to the history of the matter, the findings of the Chief Commons Commissioner in 1974, the subsequent appeal to the High Court and the Court of Appeal, and the final disposal of the matter by the Chief Commons Commissioner in his final disposal notice in 1978. They also agree with the analysis of the error of law represented by *In re Box Hill Common*, that this error of law was widely influential in 1974, and that it was later corrected by the House of Lords in *Millburn*. In light of this position, this report does not revisit the chronology of events in great detail, although the appendices to this report contain more of the background which the reader may find helpful.
15. In order for the application to be granted, it must first be established whether such an application can actually be lawfully made and processed under the provisions of the 1965 Act (it not being possible to make an application under the relevant part of the 2006 Act on the basis that the County Council is not a pioneer authority). The Applicant has highlighted references in Defra guidance which, they suggest, provide a basis for the application to be accepted.
16. Assuming that hurdle is cleared, it must then be demonstrated that the 80 Acres were in fact manorial waste and therefore fall within the scope of the decision of the House of Lords in *Millburn*.

Analysis

Whether a fresh application can be made under the 1965 Act

17. The Application states that it is made under Sections 1 to 3 of the 1965 Act, on the basis that such applications are still permitted. Specifically, paragraphs 11 and 12 of the Applicant's Submissions refer to the Defra guidance "*Commons registration authorities: maintain registers of commons and greens: How to find out which sort of commons registrations authority you are and how you must maintain your registers*" (last updated 18 November 2015), observing that this guidance states in relation to 1965 authorities that "*You can continue to process applications made under the Commons Registration Act 1965*".
18. At paragraph 13 of the Applicant's Submissions a similar reference is made to the Defra guidance "*Part 1 of the Commons Act 2006: Guidance to commons registration authorities and the Planning Inspectorate*" (December 2014). The submissions point

out that this guidance states that “*The 1965 authorities should continue to deal with applications under the 1965 Act as normal*”.

19. Similarly, paragraph 14 of the Applicant’s Submissions points out that the same guidance states “*Exceptionally, Defra takes the view that, where an application was made under the 1965 Act, which was determined and refused, it is open to the applicant to make a fresh application for the same purpose under the Act, if the applicant believes that the new application would be successful because the statutory criteria have changed ...*”
20. Section 4 of the Commons Registration Act 1965, which governed the submission of applications to register land as common land, was repealed by the Commons Act 2006⁵, and as a consequence it is unclear which part of the 1965 Act could permit the current application to be made. In any event, even if section 4 of the 1965 Act was still in force (which it is not), the strict time period specified for making an application for registration of land as common land under the 1965 Act has long since expired. Section 4(6) of the 1965 Act provided that: “*An application for registration under this section shall not be entertained if made after such date, not less than three years from the commencement of this Act, as the Minister may by order specify ...*” The period for making an application for registration ended on 2 January 1970⁶, more than half a century ago.
21. Applications under Section 4 of the 1965 Act were required to be made on ‘Form 7’, signed by every applicant who was an individual, and supported by a statutory declaration⁷. The current application is not made in this format, which is understandable since the relevant Regulations which governed the submission of applications no longer apply. This further illustrates the lack of clarity regarding the statutory basis for the application.
22. The effect of section 1(2)(a) of the 1965 Act is that, after the expiry of the specified time period (which has long since expired), no land capable of being registered under this Act as common land was or is common land unless it was so registered. As the 80 Acres were not so registered, it follows that they are statutorily deemed not to be common land, regardless of what their status might or might not have been in earlier years.
23. Whilst sections 1 to 3 of the 1965 *are* still in force in relation to 1965 authorities, these sections are general sections which do not expressly contemplate an application being made.
24. Insofar as the Defra guidance is concerned, officers do not consider that the guidance cited by the Applicant has the effect of resurrecting statutory provisions which have been repealed by Parliament. Instead, these are a reference to applications that can still be lawfully processed under the provisions of the 1965 Act where the relevant provisions remain in force (for example, an application under Section 13(c) to amend

⁵ Repealed by the 2006 Act, Schedule 6, part 1

⁶ Commons Registration (General) Regulations 1966 (SI 1966 No. 1471), Article 5

⁷ Commons Registration (General) Regulations 1966 (SI 1966 No. 1471), Article 8, and Form 7 in Schedule 1

the register to reflect an apportionment, extinguishment or release of a right of common). Officers considers that the guidance should be taken to refer to applications that can be legitimately made.

25. All of the above is supported by the following passages in *Gadsden & Cousins on Commons and Greens (Third Edition)*:

“3-25 ... While the eligibility of land for registration as waste land of a manor under the 1965 Act was acutely affected by the vicissitudes of varying interpretation over the 30 years following the enactment of the Act, the provisional registrations of land under that Act have now been determined as final, and mistakes of law cannot be revisited under that Act.

3-54 ... It is now generally accepted that the effect of non-registration under the 1965 Act of eligible land or eligible rights was to extinguish the rights, and to cause the land to cease to have any of the legal attributes of common land, or town or village green, as the case may be.

[Footnote] But see the 2006 Act Sch.2 paras 2-5, for provisions which enable the registration of certain land as common land or town or village green consequent on mistakes or omissions under the 1965 Act, and which must have the effect of reversing the deeming provision in the 1965 Act s.1(2)(a) ...”

Gadsden emphasises that the correct recourse for the Applicant would have been an application under the provisions of the 2006 Act, but as has been set out earlier in this report, the relevant provisions are not currently in force in Hampshire, and so this is not possible - as a non-pioneer authority, Hampshire County Council has no express statutory power to accept such an application.

26. In conclusion, it is considered that the 1965 Act no longer provides a lawful basis for the application to be processed, and it therefore follows that it must be rejected.

Whether the 80 Acres were manorial waste

27. In order to satisfy the statutory definition of “*common land*” in section 22(1)(b), the land must not only be “*waste land of a manor*”: it must also (and expressly) be “*not subject to rights of common*”. In other words, section 22(1)(a) and section 22(1)(b) are mutually exclusive: if land falls within section 22(1)(a) because it is subject to rights of common, it cannot fall within section 22(1)(b) as that requires it *not* to be subject to rights of common.

28. When considering the provisional registration of the 80 Acres, the Chief Commons Commissioner did find that they were subject to rights of common, in favour of Mrs Cooke and Mr Connell⁸. Consequently the 80 Acres did not (and could not) fall within the definition in section 22(1)(b) regardless of the points discussed in *Box Hill* and

⁸ Chief Commons Commissioner’s Decision No. 1 of 22 November 1974, page 2, paragraph 1; Chief Commons Commissioner’s Decision No. 2 of 22 November 1974, page 15, paragraph 2, and page 17 (entries in relation to Mr Connell and Mrs Cooke).

Milburn, because it was subject to rights of common and therefore fell within section 22(1)(a).

29. The rights found to exist over the 80 Acres in favour of Mrs Cooke were subsequently overturned on appeal to the High Court in 1977⁹. But that decision still left intact the rights that had been found to exist in favour of Mr Connell. Those rights were later voluntarily released by Mr Connell¹⁰ and subsequently ceased to exist¹¹, but this makes no difference to the fact that, at the time of the initial application to register the 80 Acres and the inquiry before the Chief Commons Commissioner, those rights did exist (as found by the Chief Commons Commissioner and which is not disputed by the Applicant).
30. This is contrast to both the *Box Hill* and *Millburn* cases, in which it was clearly established that the land in question was '*not subject to rights of common*', and so the only question was whether the land was '*waste land of a manor*'.
31. It could be argued that, when the matter was returned to the Chief Commons Commissioner for a final hearing in 1978 following the proceedings through which Mr Connell's rights were released, there were no longer any rights of common over the 80 Acres, and so the Chief Commons Commissioner ought at this stage to have considered whether the land was manorial waste. However, no party advanced this argument at the hearing, and in any event, such an argument would have failed because the land in question did not satisfy the definition in section 22(1)(b), because it was not '*waste land*' (namely, land that was '*open, uncultivated and unoccupied*'¹²).
32. It is apparent from evidence given at the 1974 inquiry and in the Objector's submissions that the 80 Acres was fenced in 1963/1964¹³, was still fenced in 1973¹⁴ and in 1978¹⁵, and is still fenced today. It follows that the 80 Acres were not '*open, uncultivated and unoccupied*' (within the meaning of the legislation) at the time of the provisional registration of the land (1968), at the time of the inquiry before the Chief Commons Commissioner (1974) and subsequent hearing (1978) or at the present day. Consequently, the 80 Acres did not then (and do not now) satisfy the definition of '*waste land*' as a matter of fact, regardless of the decision in *Millburn*.
33. For this reason, even if the County Council could accept an application (under either the 1965 Act or Schedule 2 of the 2006 Act), it is considered that the 80 Acres were not manorial waste as a matter of fact or law, and so even if the application could be accepted by the County Council, it would be bound to fail.

⁹ Decision of Brightman J of 24 March 1977 in *Whitfield v Connell and Cooke*

¹⁰ Schedule to the order of the Court of Appeal of 24 May 1978 in *Whitfield v Connell and Cooke*

¹¹ Deed of Release dated 26 April 1978 between Ernest Alexander Connell and Anthony Gary Peter Whitfield, releasing the rights of common over the 80 Acres.

¹² *Attorney-General v Hanmer* (1858) 27 LJ Ch 837 at p. 840 *per* Watson B

¹³ Objector's Submissions, Annex 1

¹⁴ Objectors Submissions, paragraphs 24.1 to 27.2

¹⁵ Objector's Submissions, paragraph 28.1 and Annex 2, Schedule to the order of the Court of Appeal of 24 May 1978 in *Whitfield v Connell and Cooke*, and Deed of Release dated 26 April 1978 between Ernest Alexander Connell and Anthony Gary Peter Whitfield, releasing the rights of common over the 80 Acres.

Other Matters

'Anomaly'

34. As set out above, the 2006 Act has only been partially implemented in England, and this creates substantial differences in the regimes that are in effect in different parts of the country. The Applicant contends that, *'if left unaddressed, the anomaly arising from the partial implementation of the 2006 Act would create inconsistency in the substance and application of the law affecting commons registration across those different local authorities who have responsibility for it'*¹⁶. The Applicant also contends that *"Central government has addressed this anomaly through the current Defra guidance to authorities on how to maintain their commons registers under the 1965 and 2006 Acts"*¹⁷. The Applicant also points out that, *"central government through Defra has given no indication when the 2006 Act will extend beyond the existing pioneer areas to the rest of England"*¹⁸. Whilst there is no doubt that such an anomaly exists, it is an anomaly that has been created by central government, not the County Council, and it is not for the County Council to try to 'fix' the system or try to interpret it in a way which removes the anomalies.

The 1974 inquiry

35. The application includes a detailed account of the evidence, and the account contained in the Chief Commons Commissioner's Decision No.2 that the 80 Acres formed part of the relevant manor¹⁹. This evidence and account have not been analysed for the purposes of preparing this report because, as set out above, it is recommended that the application should be refused regardless of whether the Applicant's submissions on this issue are correct.

The 1978 Agreement

36. As part of the settlement agreement in the case of *Whitfield v Connell and Cooke* in 1978, and in return for Mr Connell releasing his rights of common over the 80 Acres and various other arrangements, the Council agreed not to pursue the provisional registration of the 80 Acres. Specifically, the schedule to the order of the Court of Appeal of 24 May 1978 contained or recited an agreement between the parties to the case (being Mr Connell, Mr Whitfield and the Council) (the **"1978 Agreement"**). Paragraph 3 of the schedule stated as follows:

"Upon the release by the Respondent Ernest Alexander Connell of all his rights over the area amounting to approximately 80 Acres of land at present enclosed by fences upon the part of the common owned by the said Anthony Gary Peter Whitfield (such release to be effected by a separate Deed of Release made between the said Ernest Alexander Connell and said Anthony Gary Peter Whitfield upon the terms agreed between them) the said County Council shall not pursue its provisional registration of

¹⁶ Applicant's Submissions, paragraph 10

¹⁷ Applicant's Submissions, paragraph 11

¹⁸ Applicant's Submissions, paragraph 12

¹⁹ Applicant's Submissions, paragraph 20 and 21

the said area as common land and the Respondents jointly and severally consent to the amendment or withdrawal by the said County Council of its provisional registration pending before the Commons Commissioner of the said area so as to exclude all reference to the said area on the Commons Register and shall further consent to and support any Application by the said Anthony Gary Peter Whitfield or his successors in title to the Secretary of State regarding the said fences under section 194 of the Law of Property Act 1925”.

37. The Applicant addresses this agreement as follows:

“Although paragraph 3 of the schedule prevents HCC from pursuing its provisional registration of the 80 Acres, that provision is no longer of any effect and is not binding on HCC in relation to the present application. The provision was entered into in 1978 in circumstances where HCC was a party to the unfinished inquiry before the Chief Commons Commissioner at a time when the jurisdiction for adjudicating disputed registrations was conferred on Commons Commissioners. That jurisdiction has lapsed, but under the 2006 Act HCC continues with its powers and duties as a registration authority and, as such, has a quasi-judicial role which cannot be abrogated by an earlier agreement made in a different capacity.”

38. Officers agree that the 1978 agreement does not prevent the County Council from dealing with this application, and the Objector has not made any submissions on this point. However, since this question is not considered to be determinative in light of the conclusions that have been reached regarding its validity (or lack thereof), it is not necessary to consider this point further.

Conclusions

39. The 80 Acres were not manorial waste as a matter of law, regardless of the arguments advanced by the applicant in relation to the *Millburn* case.

40. The 80 Acres were not manorial waste as a matter of fact, regardless of the arguments advanced by the applicant in relation to the *Millburn* case.

41. The above notwithstanding, there is no statutory basis under which the application can be made under the 1965 Act.

42. It is not for the County Council to seek to address any perceived ‘anomaly’ in the workings of current commons legislation.

43. It is therefore considered that the application has no basis in law or fact, and it is recommended that the County Council refuses to accept it.

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

Hampshire maintains strong and sustainable economic growth and prosperity:	yes/no
People in Hampshire live safe, healthy and independent lives:	yes/no
People in Hampshire enjoy a rich and diverse environment:	yes/no
People in Hampshire enjoy being part of strong, inclusive communities:	yes/no
OR	
This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because the County Council, in its capacity as Commons Registration Authority, has a legal duty to decide whether the register of towns and village greens should be amended.	

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

Document

File: Commons Registration Act 1965
80 Acres application

Location

Countryside Access Team
Elizabeth II Court
Winchester
SO23 8UL

EQUALITIES IMPACT ASSESSMENT:

1. Equality Duty

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in Section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within Section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within Section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant protected characteristic that are connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

2. Equalities Impact Assessment:

Hampshire County Council, in its capacity as in its capacity as Commons Registration Authority, has a legal duty to decide whether the register of common land should be amended. It is not considered that there are any aspects of the County Council's duty under the Equality Act which will impact upon the determination of this application.