IN THE MATTER OF A REQUEST TO WEST BERKSHIRE DISTRICT COUNCIL AS COMMONS REGISTRATION AUTHORITY TO MAKE A PROPOSAL UNDER THE COMMONS ACT 2006 TO DE-REGISTER COMMON LAND KNOWN AS "THE CHILDREN'S CENTRE, LOWER WAY, THATCHAM"

SUBMISSIONS OF WEST BERKSHIRE DISTRICT COUNCIL

AS LANDOWNER

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IN THE MATTER OF A REQUEST TO WEST BERKSHIRE DISTRICT COUNCIL AS COMMONS REGISTRATION AUTHORITY TO MAKE A PROPOSAL UNDER THE COMMONS ACT 2006 TO DE-REGISTER COMMON LAND KNOWN AS "THE CHILDREN'S CENTRE, LOWER WAY, THATCHAM"

REQUEST TO MAKE A PROPOSAL TO DE-REGISTER COMMON LAND

- 1. This is a formal request to West Berkshire District Council as commons registration authority (the "CRA") to make a proposal to de-register land which is currently registered as common land. The request is made by West Berkshire District Council ("the Council") as the registered freehold proprietor of the land under title number BK326407 being land on the north side of Lower Way Thatcham [Appendix 1]. This land is otherwise known as "The Children's Centre, Lower Way, Thatcham." It is an unusual feature of the land that it developed with buildings: however no part of this request relies on or is affected by that fact and as such it is not necessary to go into further detail on that issue. Hereinafter the relevant land will simply be referred to as "the land."
- 2. The land is registered as a common land under the Commons Registration Act 1965 ("CRA 1965"). That registration was provisionally made on 21st June 1968 pursuant to an application made by the Thatcham Parish Council [Appendix 2]. The registration, being undisputed, became final on 1 October 1970. The relevant "register unit" is "C.L 87." Importantly, there are no registered rights of common over the land. The relevant parts of the commons register are reproduced at Appendix 3.

LEGISLATIVE FRAMEWORK

The Commons Registration Act 1965

3. The CRA 1965 was the first attempt to record the many various commons, rights of common and village greens that had customarily existed over vast swathes of England and Wales. Each commons registration authority began to keep a commons register under s.1 of the 1965 Act. Registration in any of the sections of the register pursuant to the 1965 Act was originally "provisional" and subject to objections which had to be made within specified periods. These periods expired on 31 July 1972. There were provisions made to hear disputes or, in the absence of a dispute, to finally register the land or rights. In the

case of a rejection of the application, the commons register would record that the registration had become "void": see s.4 of the 1965 Act.

4. The definition of "common land" under s.22(1) of the Commons Registration Act 1965 was land a) subject to rights of common whether those rights are exercisable at all times or only during limited periods; or b) waste land of a manor not subject to rights of common. The commons register was split up into different sections, including a "land" section and a "rights" section. Applications could be made to register land as common land, but applications could also be made to register a right of common (e.g. a right to graze sheep) and it would be implicit in such an application that it was being asserted that the land (over which the clamed right had been exercised) was common land.

Commons Act 2006, Schedule 2, Paragraph 7 (land wrongly registered)

- 5. The Commons Act 2006, Schedule 2, paragraph 2 provides as follows:
 - "7 Other land wrongly registered as common land
 - (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 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 as originally enacted; or

- (iv) land of a description specified in section 11 of the Inclosure Act 1845 (c. 118).
- (3) A commons registration authority may only remove land under subparagraph (1) acting on—
- (a) the application of any person made before such date as regulations may specify; or
- (b) a proposal made and published by the authority before such date as regulations may specify."
- 6. By paragraph 18 of the Commons Registration (England) Regulations 2014/3038 it is provided that:
 - "(1) Before taking any other steps under this Part in relation to a proposal, a registration authority must prepare a statement in writing describing the proposal and explaining the justification for it.
 - (2) An original registration authority may not proceed with a proposal under Schedule 2 to the 2006 Act unless it has complied with paragraph (1), and paragraphs (2) to (5) of regulation 22, on or before 31st December 2020, and a 2014 registration authority may not proceed with such a proposal unless it has similarly complied on or before 15th March 2027."
- 7. The guidance published by the Government on https://www.gov.uk/guidance/commons-registrations-authorities-applications-and-proposals#make-proposals summarises: "A proposal is an application that a commons registration authority makes to itself."

SUBMISSIONS

8. Submissions are now made with regard to the requirements of the Commons Act 2006, Schedule 2, paragraph 2.

"the land was provisionally registered as common land under section 4 of the 1965 Act"

9. As above, this occurred on 21st June 1968.

"the provisional registration of the land as common land was not referred to a Commons Commissioner under section 5 of the 1965 Act"

10. In 1973 the Commons Commissioners convened a hearing to determine the ownership of part of the land. It was recorded in the decision dated March 1973 [Appendix 4] that Mr Rowe, the Deputy Clerk, gave the following unchallenged evidence:

"The land is now flat grass land, used for grazing. Up to 1962 it was a pit-waste land the Council filled it in and it is now let rent free to bring it up to reasonable agricultural land. It may be reason of it situation be of value for other purposes. There are houses on the west and north; the large piece of land on the waste is part of an old pitt about 6 feet below road level and owned by the Church Commissioners."

11. It is suggested that referral to the Commons Commissioners just on the basis on determining ownership does not prevent de-registration here. Section 5 CRA 1965 (in its original form) was entitled "Notification of, and objections to, registration." See Appendix 5 for the full text. Plainly, a reading of its terms reveals that it is not concerned with referrals to the Commissioners about the ownership of common land. It is concerned only with objections to the registration of common land and rights of common.

Immediately before its provisional registration the land was not "subject to rights of common"

12. On a review of all the papers that the Council is aware of there is no evidence that the land was subject to rights of common immediately before 21st June 1968. For example, there is no registration of such rights nor any attempt to register such rights.

Immediately before its provisional registration the land was not "waste land of a manor"

13. In AG v Hanmer (1858) 31 LTS 379 waste land was held to be that land which is "uncultivated" and "unoccupied." In addition to this, in Box Parish Council v Lacy [1980] Ch 109 the Court of Appeal applied, in the context of registration under the 1965 Act, a definition of "waste of the manor" which meant that the land must be "still held of the manor." The evidence does not support the land still being held of a manor prior to provisional registration.

- 14. There is a reference, in the application form itself to a Thatcham Inclosure [A]ward 1852, although it is not explained. In Statutory Declaration dated July 1972 Brian Tetford [Appendix 6], the clerk of Newbury Rural District Council, it is recorded that the Inclosure Award of 1852 "vested in the Surveyors of the Highways of the Borough Tithing in the said Parish of Thatcham and their successors for ever and by virtue of Section 25 and 67 of the Local Government Act 1894 the said land became vested in Newbury Rural District Council." It is further set out that "the Council have received the rents and profits from the said land until the year 1963 and since that fate the Council have let the land rent free..." The reader is told that the land comprises the site of an old quarry. No doubt that it why the land is referred to as the "Gravel Pit" in the application for registration and the commons register.
- 15. Accordingly, it is submitted by the Council with respect to the above that the land was neither uncultivated nor unoccupied prior to its provisional registration. It must be assumed that the land was let out as claimed and that would entail exclusive possession being granted and asserted.
- 16. Furthermore, it is further submitted that the inclusion of waste land in a tenancy of any sort (as *per* the evidence in this case) is "sufficient to destroy waste status." See the case cited by Gadsden on Commons and Green (Current Edn) at [3-53] [Appendix 7]. This applies here as well given the evidence of letting by the Council.

Immediately before its provisional registration the land was not a "town or village green within the meaning of the 1965 Act as originally enacted"

- 17. The relevant s. 22(1) of that 1965 Act (in its original form) can, as a matter of convenience, be read so as to provide for three classes of green, where it defines such greens as:
 - "... land which been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality [class a] or on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes [class b] or on which the inhabitants of any locality have indulged in such sports and pastimes as of right for not less than 20 years. [class c]"

As to class a, the Council is not aware of any Act which allotted the development site for recreation and neither is there any other evidence that the land fell within in class b or c.

Indeed, such use of the land for recreation would be inconsistent with its past use as quarry and thereafter for grazing.

Immediately before its provisional registration the land was "not subject to be inclosed under the Inclosure Act 1845 Section 11"

18. Section 11 of the Inclosure Act 1845 ("the IA 1845") provides, in typically verbose Victorian language, as follows:

"11. Descriptions of land subject to be inclosed under this Act.

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 gated 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 other gates or stints, or any of them; all land held, occupied, or used in common, either at all times or during any time or season, or periodically, and either for all purposes or for any limited purpose, and whether the separate parcels of 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 or 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 occupation or enjoyment of the separate lots or parcels of which is subject to interchange among the respective owners in any known course of rotation or otherwise, shall be land subject to be inclosed under this Act."

19. In Gadsden on Commons and Greens 2nd Ed at [1-31] [Appendix 8] the authors try and make sense of this and describe this section as follows:

"As might be expected, the categories of land correspond to those described already as existing under the common law. The first relates to common land as generally understood whilst making it clear that the Act applies to the land whether the rights

are exercisable at all times of the year or part of the year only. The second and third categories are those described now as regulated and stinted pastures. The fourth is clearly intended to bring into scope all common fields which are held, used or occupied in common for all or part of the year whether the individual ownerships are divided or not. The final category makes certain that lot meadows and any analogous land are included, although generally this type of land would fall into category four. The fifth category of land described may also overlap the fourth where the land is used in common but additionally will apply where a sole right of vesture, herbage or underwood is held by one person to the exclusion of the owner of the soil. Vesture is a right to take all the herbage on land including the underwood and herbage is the right to cut grass a well as graze it. A sole owner of vesture of herbage will be unusual today. A right to wood and underwood is a similar right related only o trees large and small and is thought to now obsolete."

In Commons and Greens, the Modern Law (2nd Edition) Angela Sydenham defines a "stinted pasture" as "The land over which sole profits of pasture are exercised, the owner of the soil having no residual grazing rights." [Appendix 9]

20. It is submitted that the Thatcham Inclosure Award 1852 [Appendix 10] does not fall within the definition of s.11 Inclosure Act 1845. It did not purport to grant any rights of common, stinted pastures or other rights identified by the extract recited above from Gadsden. Again, the simple letting out of the land by the Council for grazing and its prior use as a quarry tends to be destructive of any notion that the land ever fell within the required categories. As such, the exercise of concluding that s.11 of the Inclosure Act 1845 does not apply is an easy one.

CONCLUSION

- 21. For all of the reasons above the Council suggest that it is appropriate for the CRA to make a proposal to de-register the land as common land. It is plainly in the public interest for such a clear error to be corrected and all the more pressing since, as above, the land is covered by buildings.
- 22. The Council ask that the CRA exercise its power to make a proposal within 30 days of receipt of this request. The written statement of reasons for making a proposal as

required by paragraph 18 of the Commons Registration (England) Regulations 2014/3038 can, it is suggested, be this document

23. Officers of the Council are prepared to assist officers of the CRA with any query they may have although it is noted that there is a need for transparency of decision-making. This request document does identify the steps that must be taken under the Commons Registration (England) Regulations 2014/3038 once a proposal is made but if any assistance if required with this then the Council is happy to assist.

Paul Wilmshurst

New Square Chambers

12 New Square

Lincoln's Inn

London

WC2A 3SW

19th June 2020

IN THE MATTER OF A REQUEST TO WEST BERKSHIRE DISTRICT COUNCIL AS COMMONS REGISTRATION AUTHORITY TO MAKE A PROPOSAL UNDER THE COMMONS ACT 2006 TO DE- REGISTER COMMON LAND KNOWN AS "THE CHILDREN'S CENTRE, LOWER WAY, THATCHAM"
REQUEST TO MAKE A PROPOSAL TO DE-REGISTER COMMON LAND
APPENDIX 1
Official Copy Title Plan - BK326407
Official Copy Register – BK326407

The electronic official copy of the register follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.



Official copy of register of title

Title number BK326407

Edition date 12.08.2009

This official copy shows the entries on the register of title on 08 JAN 2019 at 11:56:55.

This date must be quoted as the "search from date" in any official search application based on this copy.

The date at the beginning of an entry is the date on which the entry was made in the register.

Issued on 08 Jan 2019.

Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.

This title is dealt with by HM Land Registry, Gloucester Office.

A: Property Register

This register describes the land and estate comprised in the title.

WEST BERKSHIRE

- 1 (06.01.1995) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being land on the north side of Lower Way, Thatcham.
- 2 (06.01.1995) The land tinted pink on the title plan has the benefit of the rights granted by a Deed dated 11 July 1994 made between (1) Trencherwood Homes (South Eastern) Limited (2) Newbury District Council and (3) Midland Bank PLC.

 $\neg NOTE:$ Original filed.

3 (06.01.1995) The land tinted yellow on the title plan has the benefit of the following rights granted by but is subject to the following rights reserved by the Transfer dated 23 December 1994 referred to in the Charges Register:-

"THE Property is transferred together with the rights set out in the First Schedule

THERE are excepted and reserved out of the Property for the benefit of the Retained Land the rights set out in the Second Schedule

THE FIRST SCHEDULE

The Appurtenant Rights

Full right and liberty for the Purchaser its servants and workmen and others authorised by them to pass and repass at all times and for all purposes with or without vehicles and equipment over and along the land coloured brown on the attached plan being the adoptable roads and ways on the Vendor's Retained Land until such time as the same shall be taken over and become maintainable at the public expense and until such time to contribute to the maintenance thereof according to user

THE SECOND SCHEDULE

The Reserved Rights

The right for the Vendor in fee simple as appurtenant to the ownership

A: Property Register continued

or occupation of the Retained Land at all times and for all purposes to use the pipes sewers cables and other service media now in under above or on the Property or any part of it together with the right to enter on the Property for the purpose of inspecting maintaining repairing and replacing all such pipes sewers cables and other service media."

NOTE 1: The Retained Land referred to adjoins the eastern boundary of the land in this title

NOTE 2: The land coloured brown referred to is reproduced on the title plan.

4 (07.03.2008) A new title plan based on the latest revision of the Ordnance Survey Map has been prepared.

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

1 (06.01.1995) PROPRIETOR: WEST BERKSHIRE DISTRICT COUNCIL of Council Offices, Market Street, Newbury, Berks RG14 5LD and of DX30825, Newbury.

C: Charges Register

This register contains any charges and other matters that affect the land.

1 (06.01.1995) Wayleave Consent dated 21 October 1975 made by Newbury District Council relates to the erection, maintenance, repair, renewal, inspection and removal of electric lines and works.

¬NOTE: Copy filed.

2 (06.01.1995) Wayleave Consent undated under the hand of Michael John Harris relates to the erection, maintenance, repair, renewal, inspection and removal of electric lines and works.

 $\neg NOTE:$ Copy filed.

3 (06.01.1995) The land tinted pink on the title plan is subject to the rights granted by a Deed dated 31 May 1994 made between (1) Newbury District Council and (2) Trencherwood Homes (South Eastern) Limited.

The said Deed also contains restrictive covenants by the grantor.

¬NOTE: Original filed.

A Transfer of the land tinted yellow on the title plan and other land dated 3 December 1993 made between (1) The Oxford Diocesan Board of Finance (Transferor) and (2) Trencherwood Homes (South Eastern) Limited (Transferee) contains the following covenants:-

"The Transferee to the intent and so as to bind the Property (so far as practicable) into whosesoever hands the same may come and for the benefit and protection of the adjoining land neighbouring lands now belonging to the Transferor and each and every part thereof shown edged green on the annexed plan ("the Retained Land") hereby for itself and its successors in title covenants with the Transferor to observe and perform the stipulations set out in the Third Schedule hereto

THIRD SCHEDULE

Restrictive Covenants

1. That neither the Property nor any part thereof nor any existing or future building thereon or on any part thereof shall at any time hereafter be used as or for a place of amusement hotel tavern inn or

C: Charges Register continued

public house nor shall any spirituous or fermented liquors at any time be sold in or upon the Property or any part thereof and that no act deed matter or thing shall at any time be done suffered or permitted in or upon the Property or any part thereof which may be or become a nuisance annoyance or disturbance to the Transferor or its tenants or to the Incumbent for the time being of the benefice of Thatcham or his successors or which may tend to depreciate or lessen the value of the adjoining and neighbouring property belonging to the Transferor

- 2. Not to use the Property nor any part thereof except as a residential estate together with any other use incidental thereto
- 3. That no act deed matter or thing shall at any time be done suffered or permitted in or upon the Property or any part thereof which may be or become a nuisance annoyance or disturbance to the Minister for the time being conducting or the congregation attending divine service in the Parish Church of St. Mary Thatcham or the churchyard surrounding the same."

NOTE: The Retained Land referred to lies to the east of the land in this title.

The land tinted yellow on the title plan is subject to the following rights reserved by the Transfer dated 3 December 1993 referred to above:-

"EXCEPT AND RESERVING to the Transferor for the benefit of the Retained Land (as hereinafter defined) the rights set out in the Second Schedule hereto

SECOND SCHEDULE

Exceptions and Reservations

- 1. The right for the Transferor and all persons authorised by the Transferor (in common with all other persons having a similar right):-
- 1.1 at all times and for all reasonable purposes in connection with the use of the Retained Land until adoption to pass with or without vehicles along all roads verges and footpaths now or hereafter constructed with the Property which are intended to become highways maintainable at public expense ("the Estate Roads) and similar rights over any part of the Property lying between the Estate Roads and the Retained Land in any reasonable position or positions
- 1.2 to connect up to and to use all main foul and surface water sewers now or hereafter constructed within the Property which are intended to become sewers maintainable at the public expense ("the Estate Sewers") for the passage of water and sewage PROVIDED THAT any such connection shall be
- 1.2.1 in such position as the Transferee may reasonably determine and
- $1.2.2\,$ made causing the minimum of damage any such damage to be put right forthwith
- 1.3 to use all drains channels sewers (excluding the Estate Sewers) pipes wires cables watercourses gutters and other conducting media whatsoever (and any structures incidental to the user thereof) now or hereafter constructed ("the Service Installations") comprised in the Property for the passage of water sewage gas electricity and other services
- 1.4 to enter upon the Property (other than the site of any electricity sub-station or similar installation) at all reasonable times (and at any time in an emergency) so far as may be necessary for the purposes of inspecting maintaining repairing and renewing the Estate Roads the Estate Sewers and the Service Installations comprised in the Property and similar rights so far as the same may be required by any Statutory Authorities or Service Supply Companies in connection with the supply of services usually provided or maintained by them PROVIDED that in exercising such right of entry the Transferor shall cause the minimum of damage and forthwith shall put right such damage as may be caused

Title number BK326407

C: Charges Register continued

- 2. Any rights of light or air which would prejudicially affect the use by the Transferor of the Retained Land for building or any other purpose are hereby expressly excepted from the effect of the Transfer and it is hereby declared that the Transferee shall not become entitled to any such rights for the benefit of the Property."
- 6 (06.01.1995) A Transfer of the land tinted yellow on the title plan dated 23 December 1994 made between (1) Trencherwood Homes (South Eastern) Limited (Vendor) and (2) Newbury District Council (Purchaser) contains the following covenants:-

"THE Purchaser so as to bind the whole and every part of the Property covenants with the Vendor for the benefit of the whole and every part of the Retained Land as set out in the Third Schedule

THE THIRD SCHEDULE

The Restrictive Covenant

- (1) Not to use the Property or any part thereof except as an open space
- (2) Not to erect any buildings or other constructions on the Property."

NOTE: The Retained Land referred to adjoins the eastern boundary of the land in this title.

End of register

These are the notes referred to on the following official copy

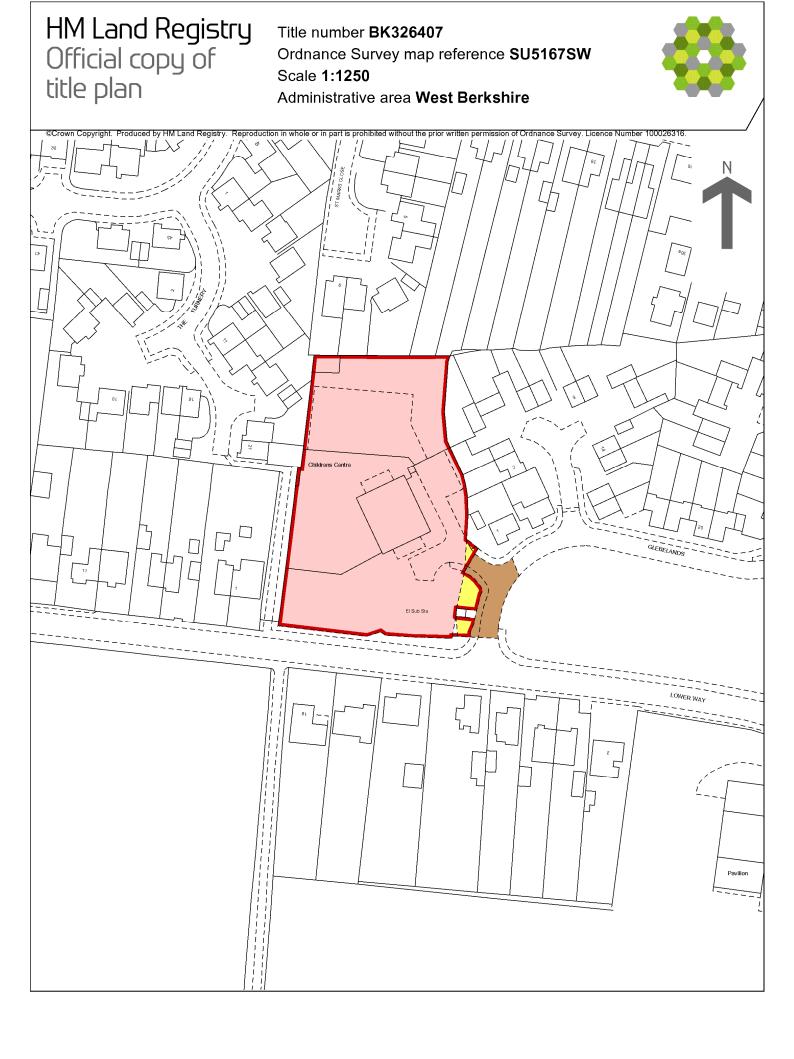
The electronic official copy of the title plan follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.

This official copy was delivered electronically and when printed will not be to scale. You can obtain a paper official copy by ordering one from HM Land Registry.

This official copy is issued on 08 January 2019 shows the state of this title plan on 08 January 2019 at 11:56:55. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002). This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.

This title is dealt with by the HM Land Registry, Gloucester Office .



IN THE MATTER OF A REQUEST TO WEST BERKSHIRE DISTRICT COUNCIL AS COMMONS
REGISTRATION AUTHORITY TO MAKE A PROPOSAL UNDER THE COMMONS ACT 2006 TO DE-
REGISTER COMMON LAND KNOWN AS "THE CHILDREN'S CENTRE, LOWER WAY, THATCHAM"
REQUEST TO MAKE A PROPOSAL TO DE-REGISTER COMMON LAND
APPENDIX 2
APPENDIA 2
Commons Registration Act 1965 Application – 21.6.68

Edition No.

See Overleaf for Notes

Register of COMMON LAND

LAND SECTION—Sheet No. |

2.NO. ECT. No. and date of entry No. 2 below (See entr) 1968. Description of the land, reference to the register map, registration particulars etc. No. 328 made land Hed Gravel hit hower

The registration at entry No. 1 above, being undisputed, became final on 1st October 1970.

IN THE MATTER OF A REQUEST TO WEST BERKSHIRE DISTRICT COUNCIL AS COMMONS REGISTRATION AUTHORITY TO MAKE A PROPOSAL UNDER THE COMMONS ACT 2006 TO DE- REGISTER COMMON LAND KNOWN AS "THE CHILDREN'S CENTRE, LOWER WAY, THATCHAM"
REQUEST TO MAKE A PROPOSAL TO DE-REGISTER COMMON LAND
APPENDIX 3
Registration of common land – Form 3 – Rights
Registration of common land – Form 4 – Ownership
CL87 Notes

The land called Gravel Pit, Lower Way, Thatcham in the parish of Thatcham, Berks as marked on sheet 56NW (application No 328 by Thatcham Parish Council).

Undisputed - became final on 1st October, 1970.

No notes on land section.

Land not subject to any rights of common.

Part of the land registered under the Land Registration Acts 1925 and 1971 under BK 110945.

The remainder subject to ownership registration by Newbury Rural District Council following direction (No 33) dated 5th June 1973 by the Commons Commissioner. (decision letter dated 29/3/73) (hearing held 21/3/73) (ref 2/U/79)

Land comprises of 1.121 acres.

CL 87

The land called Gravel Pit, Lower Way Thatcham in the parish of Thatcham, Berkshire as marked on sheet 56NW (application No. 328 by Thatcham Parish Council).

No notes on land section

Land not subject to any rights o common.

Part of the land registered under the Land Registration Acts 1925 and 1971 under BK. 110945. The remainder subject to ownership registration by Newbury Rural District Council following the Direction (no33) dated 5th June 1973 by the Commons Commissioner. (decision letter dated 29/3/73) (hearing held 21/3/73) (ref. 2/U/79)

Land comprises of 1.121 acres

(

Children's Centre building on the corner land- leased from Newbury District Council. They wish to build a new premises and my advice will be to ask for DOE approval.

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 land section of this register unit.

Registration authority

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Register unit No. C.k.87. Edition No.

See Overleaf for Notes

Register of COMMON LAND

RIGHTS SECTION—Sheet No.

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Register of COMMON LAND

OWNERSHIP SECTION—Sheet No.

Note: This section contains the registration of every person registered under the Act as owner of any of the land described in the land section of this register unit. It does not contain any registration in respect of land of which the freehold is registered under the Land Registration Acts 1925 and 1936, but the absence from this section of a registration in respect of any land described in the land section does not necessarily indicate that the freehold of that land is registered under those Acts.

Edition No. Register unit No. C. L. 87

See Overleaf for Notes

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OF SECTION 8(2) OF THE CON	OF THE COMMONS COMMISSION	RIGISTERED PURSUANT TO									Kembury Rural District Council	Name and Address of person registered as owner	3
COMMONS REGISTRATION ACT. 1965.	COMMONS COMMISSIONETZ (REF. 2 / V/79) UNDER THE PROVISIONE	DIRECTION (NO. 33) DATES STH JUNE 1973,	Commono Registration Act. 1965 as the owner.	no person is negistened under Section it of the	under title No BI< 110945 and of which said paid	the Land Registration Acts 1925 to 1971 freehold	part of the said land not registered under	of this Register unit which said part is the	being the land compused in the Land Section	Lawes Way, Thatcham, Newbury Runal District	Part of the land brown as the brown Pit,	Particulars of the land to which the registration applies	4

IN THE MATTER OF A REQUEST TO WEST BERKSHIRE DISTRICT COUNCIL AS COMMONS REGISTRATION AUTHORITY TO MAKE A PROPOSAL UNDER THE COMMONS ACT 2006 TO DE- REGISTER COMMON LAND KNOWN AS "THE CHILDREN'S CENTRE, LOWER WAY, THATCHAM"
REQUEST TO MAKE A PROPOSAL TO DE-REGISTER COMMON LAND
APPENDIX 4
Letter from Commons Commissioners – 13.4.1973 Letter 5.4.1991



The Office of the Commons Commissioners Watergate House, 15 York Buildings Adelphi, London WC2N 6LB

Telephone 01-839 7196 ext

The Clerk,
Berkshire County Council
Shirehall,
Reading, RGL 3EY

Date

13 April 1973

Dear Sir

Commons Registration Act 1965
Reference No. 2/U/79

The Gravel Pit, Thatcham

Register Unit No. C.L.87

I enclose a copy of the decision of the Commons Commissioner in this matter.

Any application to the Commissioner for the statement of a case must be made in writing addressed to me at this office, and must state the point of law in question.

Since you may not, in law, be a ''person aggrieved'', you are recommended to take legal advice if you contemplate requiring the Commissioner to state a case.

If you were entitled to be heard at the hearing of this matter, but did not attend the hearing, the Commissioner may, on an application made by you within 10 days from the date of this letter, re-open the hearing and set aside his decision on such terms as he thinks fit, if he is satisfied that you had sufficient reason for your absence.

Yours faithfully,

B. Fletcher

Clerk of the Commons Commissioners.



COMMONS REGISTRATION ACT 1965

Reference No 2/U/79

In the Matter of the Gravel Pit, Thatcham, Newbury R.D., Berkshire

DECISION

This reference relates to the question of the ownership of part of land known as the Gravel Pit, Lower Way, Thatcham, Newbury Rural District being the land comprised in the Land Section of Register Unit No CL.87 in the Register of Common Land maintained by the Berkshire County Council. The said part is the land which forms part of that comprised in this Register Unit, which is no registered under the Land Registration Acts 1925 to 1971 freehold under Title No BK 110945 and of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference Newbury Rural District Council in a letter dated 2 January 1973 claimed to be the freehold owner of the land in question and no other person claimed to be the owner or to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Reading on 21 March 1973. The hearing was attended by Newbury Rural District Council who were represented by Nr J A Rowe their Deputy Clerk.

Fir Howe produced a statutory declaration made 7 July 1972 by Fir B J Thetford clerk of the Council, who had then held that position for 4 years. He said that by the Thatchem Inclosure Award dated 6 November 1852 the land was vested in the Surveyor of the Highways of the Borough Tithing in the Parish of Thatchem and their successors, that by virtue of sections 25 and 67 of the Local Government Act 1894 it became vested in the Council, that the records of the Council's lands show that the Council have received the rents and profits up to 1963 and since then it had been let rent free and that the Council had been in full and undisturbed possession and enjoyment without any adverse claim during the period he had been clerk and previously thereto according to the said records.

Hr Rowe in his oral evidence said:— He had been Deputy Clerk for the last 4 years. The land is now flat grass land, used for grazing. Up to 1962 it was a pit — waste land the Council filled it in and it is now let rent free to bring it back to reasonable agricultural land. It may by reason of its situation be of value for other purposes. There are houses on the west and north; the large piece of land on the east is part of an old pit about 6 feet below road level and owned by the Church Commissioners. The part registered under the Land Registration Acts is very small when compared with the rest.

On the evidence outlined above, I conclude that the Council is in possession of this land and that it is practically certain that their possession will never be disturbed. Possession in such circumstances being equivalent to ownership, I am therefore satisfied (notwithstanding that the Award was not produced or relied on) that the Council is the owner of the land, and I shall accordingly direct the Berkshire County Council, as registration authority under section 8(2) of the Act of 1965, to register Newbury Rural District Council as the owner of the part of the land comprised in this Register Unit and not registered under the Land Registration Acts.



I am required by regulation 30(1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by this decision as being erroneous in point of lat mey, within 6 weeks from the date on which notice of the decision is sent to him, require me to state a case for the decision of the High Court.

Dated this

2915

day of March

ay of March 1973

a. a. Barden 7. Ce

Commons Commissioner

ENV PTM

Mr P Moate Direct Dial 233122

5 April, 1991

Dear Sir

COMMON LAND, LOWER WAY, THATCHAM

I thank you for your letter of 7 March and apologise for the delay in replying. I enclose an application form for a search of the Register of Common Land. Please return it to me duly completed together with the necessary plans and fee so that a search can be made as requested.

As well as the usual need to obtain planning permission for development it is also necessary in certain circumstances to seek the consent of the Secretary of State under Section 194 of the Law of Property Act 1925 before buildings can be erected on common land. The rights that existed in 1926 are relevant in determining whether Section 194 applies to a particular common.

At a hearing before the Commons Commissioner to establish ownership of CL87, held on 29 March 1973 a Statutory Declaration by Mr B J Thetford, Clerk to the then Newbury Rural District Council, was produced. Mr Thetford declared that by the Thatcham Inclosure Award dated 6 November 1852 the land was vested in the Surveyor of the Highways of the Borough Tithing in the Parish of Thatcham and their successors, that by virtue of Sections 25 and 67 of the Local Government Act 1894 it became vested in the Council, that the records of the Council's lands showed that the Council had received the rents and profits up to 1963 and since then it had been let rent free and the Council had been in full and undistrubed possession and enjoyment without any adverse claim during the period he had been Clerk (4 years) and previously thereto according to the said records.

Mr Rowe, who was Deputy Clerk of Newbury Rural District Council, was present and said the land was now flat grass land, used for grazing. Up to 1962 it was a pit-waste land; the Council filled it in and it was let rent free to bring it back to reasonable agricultural land. It may by reason of its situation be of value for other purposes. There were houses

IN THE MATTER OF A REQUEST TO WEST BERKSHIRE DISTRICT COUNCIL AS COMMONS REGISTRATION AUTHORITY TO MAKE A PROPOSAL UNDER THE COMMONS ACT 2006 TO DE- REGISTER COMMON LAND KNOWN AS "THE CHILDREN'S CENTRE, LOWER WAY, THATCHAM"
REQUEST TO MAKE A PROPOSAL TO DE-REGISTER COMMON LAND
APPENDIX 5
Commons Registration Act 1965 (Section 5 Notification of, and objections to, registration)

Commons Registration Act 1965 c. 64

s. 5 Notification of, and objections to, registration.



Version 1 of 3

2 January 1967 - 30 September 2008

Subjects

Real property

Keywords

Commons; Land registration; Notification; Objections

5.— Notification of, and objections to, registration.

- (1) A registration authority shall give such notices and take such other steps as may be prescribed for informing the public of any registration made by it under section 4 of this Act, of the times and places where copies of the relevant entries in the register may be inspected and of the period during which and the manner in which objection to the registration may be made to the authority.
- (2) The period during which objections to any registration under section 4 of this Act may be made shall be such period, ending not less than two years after the date of the registration, as may be prescribed.
- (3) Where any land or rights over land are registered under section 4 of this Act but no person is so registered as the owner of the land the registration authority may, if it thinks fit, make an objection to the registration notwithstanding that it has no interest in the land.
- (4) Where an objection to a registration under section 4 of this Act is made, the registration authority shall note the objection on the register and shall give such notice as may be prescribed to the person (if any) on whose application the registration was made and to any person whose application is noted under section 4(4) of this Act.
- (5) Where a person to whom notice has been given under subsection (4) of this section so requests or where the registration was made otherwise than on the application of any person, the registration authority may, if it thinks fit, cancel or modify a registration to which objection is made under this section.
- (6) Where such an objection is made, then, unless the objection is withdrawn or the registration cancelled before the end of such period as may be prescribed, the registration authority shall refer the matter to a Commons Commissioner.
- (7) An objection to the registration of any land as common land or as a town or village green shall be treated for the purposes of this Act as being also an objection to any registration (whenever made) under section 4 of this Act of any rights over the land.
- (8) A registration authority shall take such steps as may be prescribed for informing the public of any objection which they have noted on the register under this section and of the times and places where copies of the relevant entries in the register may be inspected.
- (9) Where regulations under this Act require copies of any entries in a register to be sent by the registration authority to another local authority they may require that other authority to make the copies available for inspection in such manner as may be prescribed.

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IN THE MATTER OF A REQUEST TO WEST BERKSHIRE DISTRICT COUNCIL AS COMMONS REGISTRATION AUTHORITY TO MAKE A PROPOSAL UNDER THE COMMONS ACT 2006 TO DE-
REGISTER COMMON LAND KNOWN AS "THE CHILDREN'S CENTRE, LOWER WAY, THATCHAM"
REQUEST TO MAKE A PROPOSAL TO DE-REGISTER COMMON LAND
APPENDIX 6
Statutory Declaration of Brian Thetford – July 1972

- I, BRIAN JOHN THETFORD Clerk of Newbury Rural District Council
 HEREBY SOLEMNLY AND SINCERELY DECLARE as follows:-
- 1. I am the Clerk of Newbury Rural District Council and have held that position for over four years.-
- 2. I have in my possession the records of the land in the Parish of Thatcham in the County of Berks belonging to the Newbury Rural District Council.-
- 3. By the Thatcham Inclosure Award dated the 6th day of November 1852 the land described in the Schedule hereto was vested in the Surveyors of the Highways of the Borough Tithing in the said Parish of Thatcham and their successors for ever and by virtue of Sections 25 and 67 of the Local Government Act 1894 the said land became vested in Newbury Rural District Council.-
- 4. The said records of the Council's lands in the Parish of Thatcham show that the Council have received the rents and profits from the said land up until the year 1963 and since that date the Council have let the said land rent free. The said Council have been in full and undisturbed possession and enjoyment of the said land since it become vested in them and in receipt of the rents and profits thereof without any adverse claim during the whole of the time that I have been Clerk to the Council as aforesaid and during the period previously thereto according to the said records.

 5. I am able to make this Declaration from the knowledge which I have acquired of the properties and land of the Newbury Rual District Council during the period for which I have held the appointment as Clerk

 AND I MAKE this solemn declaration conscientiously believing

SCHEDULE

Statutory Declarations Act 1835 .-

the same to be true and by virtue of the provisions of the

1.121 scres of land situate in the Parish of Thatcham in the County of Berks and having a frontage to Lower Way Thatcham aforesaid as the same is shown for the purpose of identification

edged red on the attached plan which said land comprises the

DECLARED at NEWBURY in the County of BERKS this 7 th day of July 1972.-

The &

Before me,

A Commissioner for Oaths.



IN THE MATTER OF A REQUEST TO WEST BERKSHIRE DISTRICT COUNCIL AS COMMONS REGISTRATION AUTHORITY TO MAKE A PROPOSAL UNDER THE COMMONS ACT 2006 TO DE- REGISTER COMMON LAND KNOWN AS "THE CHILDREN'S CENTRE, LOWER WAY, THATCHAM"
REQUEST TO MAKE A PROPOSAL TO DE-REGISTER COMMON LAND
APPENDIX 7
Gadsden on Commons and Greens (Current Edn) pages 3 -53

GADSDEN ON COMMONS AND GREENS

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9/D/9-10,

definition. The Commissioner went on to consider whether the land was also occupied and took the view, however, that:

"... to the extent to which the rents paid under the agreements are greater than the rents which could have been obtained for the farms without any right to graze on Arden Moor, the owner is in receipt of money from the Moor and is thereby enjoying benefit from it. The owner is using the land by taking in the sheep of other people to graze on it, it being immaterial that the owners of the sheep are also tenants of other land belonging to the same owner. In my view such a use of land is sufficient to make it occupied and thus to take it out of the category of 'waste lands'."

Tenanted and leased land

The Commissioners have consistently held that where land is let or leased the land cannot be waste land of a manor. Thus, land let since 1897, although remaining unenclosed, must have been converted to demesne land. In such circumstances it could not be construed as being waste land. Further, land leased for a term of years is demesne, 308 and the inclusion of land in a tenancy agreement without actual occupation is sufficient to destroy waste status. 309 In contradistinction, the existence of a sporting tenancy over a waste is not only consistent with its character as parcel of the manor but also may be supportive of such status. 310

Rights attached to leases, tenancies and licences were excluded from registration under the CRA 1965. Thus the tenant's interest in a lease was not capable of being registered, but the landlord's interest was probably capable of being registered. Similarly rights of sole pasture if let or licensed are not capable of being registered by the tenant or licensee. A similar position applies under the 2006 Act. However, it must be noted that severance has been restricted since the enactment of section 9, but severance is permitted in specifically defined cases such as an authorised—temporary severance by letting or leasing of a right of common by virtue of Schedule 1, paragraph 2, to the 2006 Act. 311

Protected land

There is no compelling reason why land which is regulated under the Metropolitan Commons Acts 1866 to 1878, the Commons Act 1876 or a local Act should

³⁰⁷ Re Hardown Hill, Whitechurch, Canonicorum and Chideock, Dorset (No.1). Re (1974) 10/D/45-55.

311 See 3-118 below. 21 127 to behavior as \$5, grant (Tables 21.12) (A20) and (disperse)

3-53

3-54

³⁰⁸ Re land to the north of Pipers Green, Brockley Hill, Stanmore, Greater London (1974) 59/D/7.
³⁰⁹ Re Waste Land, Carperby, N Yorks. (1977) 268/D/96; contra Re Twm Barlwm Common, Risca and Rogerstone (1986) 273/D/106-7, per Chief Commissioner Langdon Davies: letting of land is a relevant but not conclusive consideration; a tenancy gives a right to occupy; "occupation" a question of fact (sed quaere whether receipt of rent by the lord is not an indication that the land is of demesne status).

³¹⁰ Re Burton Heath; Bellord v Colyer (unreported 12 May 1983) per Nourse J.

IN THE MATTER OF A REQUEST TO WEST BERKSHIRE DISTRICT COUNCIL AS COMMONS REGISTRATION AUTHORITY TO MAKE A PROPOSAL UNDER THE COMMONS ACT 2006 TO DE- REGISTER COMMON LAND KNOWN AS "THE CHILDREN'S CENTRE, LOWER WAY, THATCHAM"
REQUEST TO MAKE A PROPOSAL TO DE-REGISTER COMMON LAND
APPENDIX 8
Gadsden on Commons and Greens (2 nd Ed) pages 1-31

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"commons" are defined in previous statutes, although usually by reference to lands described for the purposes of inclosure in another Act. In modern statutes there seems to have been a tendency to rely on the definition contained in the CRA 1965. That definition, however, had its own obscurities. This part of the chapter considers in outline first the various definitions which are currently available. The Acts of Parliament are then noted where there is no definition as such but which throw light on the classes of land concerned either by a physical description or by reference to the rights exercisable over the land. and determination of the second section of the second section of the second section section is a second section of the second section section is a second section of the second section section is a second section of the second section sect

Earlier commons legislation

In the earlier statutes definitions of common land were unknown and the land 1-30 affected is described by its physical nature or the use to which it is put. In the Commons Act 1285 (now repealed), which was concerned with the lord's right to remove land from common land status by the process known as approvement, 132 reference was made only to wastes, woods and pastures. The Inclosure Act 1773 (still in force) is concerned with "the better cultivation, improvement and regulation of the Common Arable Fields, Wastes and Commons of Pasture". In the absence of definitions, however, it is left to the description of rights to qualify the various provisions.

19th century commons legislation

everage independing

The description of "land subject to be inclosed" described in section 11 of the Inclosure Act 1845, i.e. the land eligible for inclusion in an inclosure award, most nearly approximates to the land described in the present work as the "common lands". 133 The categories are:

"... 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 enjoyment thereof; ...

all gated and stinted pastures in which the property of the soil or 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 other gates or stints, or any of

all land held, occupied, or used in common, either at all times or during any time or season, or periodically, and either for all purposes or for any limited purpose, and whether the separate parcels of the several owners of

132 Repealed by the 2006 Act s.50, Sch.6, Pt 3, and see below 5-40.

¹³³ NB the exception of waste land of a manor not subject to rights of common. This is wholly exceptional, being a form of unincumbered freehold land which was included as a statutory form of common land: see the CRA 1965 s.22(1), now repealed by the 2006 Act s.49, Sch.6, Pt 1.

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 or 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 occupation or enjoyment of the separate lots or parcels of which is subject to interchange among the respective owners in any known course of rotation or otherwise, shall be land subject to be inclosed under this Act".

' As might be expected, the categories of land correspond to those described already as existing under the common law. The first relates to common land as generally understood whilst making it clear that the Act applies to the land whether the rights are exercisable at all times of the year or part of the year only. The second and third categories are those described now as regulated and stinted pastures. The fourth is clearly intended to bring into scope all common fields which are held, used or occupied in common for all or part of the year whether the individual ownerships are divided or not. The final category makes certain that lot meadows and any analogous lands are included, although generally this type of land would also fall into category four. The fifth category of land described may also overlap the fourth where the land is used in common but additionally will apply where a sole right of vesture, herbage or underwood is held by one person to the exclusion of the owner of the soil. Vesture 134 is a right to take all the herbage on land including the underwood and herbage 135 is the right to cut grass as well as graze it. A sole owner of vesture or herbage will be unusual today. A right to wood and underwood is a similar right related only to trees large and small and is thought to be now obsolete.

In later 19th century statutes these definitions tended to be by reference to land subject to be inclosed under the Inclosure Acts. This seems to indicate that all the categories of land included were seen at that time as at least being part of the common lands. The CRA 1965 definition was an exception. 136

1-32 Metropolitan Commons Acts 1866 to 1898: Section 3 of the Metropolitan Commons Act 1866 defined a "common" to mean any land subject to rights of common. This was clearly found to be inadequate and by section 2 of the Metropolitan Commons Amendment Act 1869 the words "and any land subject to be included under the provisions of the Inclosure Act 1845" were added. The word "included" almost certainly must be a mistake in substitution for "inclosed" if for no other reason than that any land could be included in an inclosure award whether subject to be inclosed or not.137

¹³⁴ cf. 2–51.

¹³⁵ cf. 2-53.

¹³⁶ CRA 1965 s.22(1), now repealed by the 2006 Act s.49, Sch.6, Pt 1, and see 3-40 and 3-46.

¹³⁷ Inclosure Act 1845 s.86; Inclosure Act 1848 s.l.

IN THE MATTER OF A REQUEST TO WEST BERKSHIRE DISTRICT COUNCIL AS COMMONS REGISTRATION AUTHORITY TO MAKE A PROPOSAL UNDER THE COMMONS ACT 2006 TO DE- REGISTER COMMON LAND KNOWN AS "THE CHILDREN'S CENTRE, LOWER WAY, THATCHAM"
REQUEST TO MAKE A PROPOSAL TO DE-REGISTER COMMON LAND
APPENDIX 9
Commons and Greens, the Modern Law (2 nd Ed) - Definitions

Commons and Greens The Modern Law

Second Edition

Angela Sydenham

₱ lime legal

Chapter 3

RIGHTS OF COMMON

3.1 Definitions

3.1.1 Definition of Right of Common

A right of common is a form of profit à prendre. This has been defined as "the right to take something off another person's land". The right must be capable of ownership. It must be part of the land, or minerals or crops or wild animals on the land. The common law definition of a right of common is such a right where the surplus belongs to the owner of the soil. The interest must be held for an equivalent of a fee simple in possession. The Commons Act 2006 gives the following definition:

"right of common includes a cattlegate or beastgate (by whatever name known) and a right of sole or several vesture or herbage or of sole or several pasture, but does not include a right held for a term of years or from year to year".

Rights of common were defined in similar terms in the Commons Registration Act 1965.⁴

The definition is wider than the common law definition, as it includes rights where there is no residuary interest in the owner of the soil. Beastgate and cattlegate are terms used in different parts of the country to describe the right to graze a fixed number of animals on the common. It may be that the owners of the rights have the exclusive right to graze the land, the owner of the soil having no residual rights, or the owners of the rights may be grazing the land because they are also owners of the soil.

The right of sole vesture extends to the enjoyment of the corn, grass, underwood and sweepage (ie all that came under the sweep of the scythe). Pasturage is the right to take grass by the mouths of cattle. Herbage probably includes the right to cut the grass. Sole and several means that the owner of the soil has no interest in the right. The right may be held by one or more persons. It should be noted that sole rights which are not rights of vesture, herbage or pasture, although they are profits à prendre, are not rights of common and are not registrable under the

Alfred F. Beckett Ltd v Lyons [1967] Ch 449 at 482.

Before 1926, a right of common could exist as a customary right annexed to a copyhold estate. Copyholders could not acquire rights by prescription as they could not hold a freehold estate.

Section 61(1). Section 22(1).

Commons Act 2006. Nor were they registrable under the Commons Registration Act 1965.

3.1.2 Appendant or Appurtenant

A right of common appendant was a common law incident which attached to the grant of arable land before the Statute of Quia Emptores 1290.5 It gave certain freehold tenants the right to use the manorial waste for horses and oxen which were needed to plough, and cows and sheep to manure, the arable land. The right could not be severed from the land to which it was appendant. A right appurtenant is annexed to land, but an appurtenant right of pasture could, before 28 June 2005, be severed from the land, provided the right of common was for a fixed number of animals. The grazing right, unlike a right appendant, is not just for cattle, sheep, horses and oxen. It has been held to exist in respect of donkeys, swine, goats and sheep. An appurtenant right may be annexed to any type of land including buildings, and the subject matter is not limited to grazing. There may, for instance, be a right to take peat for the benefit of a particular house. The other main difference between rights appendant and appurtenant was that, where the owner of an appendant right bought part of the common over which the right was exercised, he lost a proportionate part of the right because of the unity of ownership. On the other hand, where the owner of an appurtenant right bought part of the common, the whole of his right was extinguished.6

These distinctions are no longer relevant. The Commons Act 2006 provides that no registered common rights may be severed except in very limited circumstances.7 In addition, variation, apportionment and extinguishment can only take place in accordance with the Act.

3.1.3 In Gross

There are rights of common which are not annexed to land. Sole rights are generally held in gross. In Anderson v Bostock, it was held that an exclusive

Tyrringham's Case (1854) 76 ER 973.

Commons Act 2006, s 9.

Some inclosure awards may have allotted sole rights as appurtenant to land. See Gadsden on Commons and Greens (Sweet and Maxwell), para 2.09.

[1976] Ch 312.

This statute abolished sub-infeudation, ie the lord of the manor could no longer carve out new freehold estates from his own interest. He could transfer only his own freehold estate, or part of it, to another, or grant lesser interests.

Once the sections are in force in the particular area. At the time of writing, these sections are in force only in the registration areas in England of the registration authorities specified in Commons Registration (England) Regulations 2014, SI 2014/3038, Sch 1 - that is, the original pioneer areas and Cumbria and North

Registration

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right of grazing could not be an appurtenant right. Appurtenant rights have to be related to the needs or use of the dominant tenement.

Since 28 June 2005, it has not been possible, except in limited specified circumstances, to convert appurtenant rights into rights in gross. However, all existing registered rights in gross will continue.

3.1.4 Pur Cause de Vicinage

This is a right which allows the commoners of one common to let their cattle¹¹ stray onto a contiguous common. It is ancillary to a right of common appendant, appurtenant or in gross, and it can exist only in connection with a common of pasturage. The right must have existed since time immemorial or for a period which raises that presumption (eg in living memory). The cattle must have been originally turned out on the home common which must be capable of feeding that number of animals. The total enclosure of one common would terminate the arrangement. There are several statutory provisions which prevent such enclosure.

3.2 Subject Matter of Rights of Common

3.2.1 Introduction

The main classification of rights of common by subject matter is set out below. However, rights of common are not limited to these categories. The validity of any right depends on it being entered in the registers of common land or town or village greens (TVGs) held by the registration authorities. ¹² For rights other than pasture, it may be necessary to look behind the registers to discover the nature and extent of the right. Sole rights, other than sole rights of vesture, herbage and pasture, ¹³ are not rights of common.

3.2.2 Common of Pasture

As has been explained above, a right of pasture can be appendant, appurtenant or in gross. A common of pasture was limited either to a fixed number of animals or according to the principle of levancy and couchancy (ie the number of animals which could be over-wintered on the in-by farm; literally, the number of animals which could stand up and lie down). The Commons Registration Act 1965¹⁴ required all grazing rights to be registered for a fixed number of animals, including those which were formerly measured by levancy and couchancy.

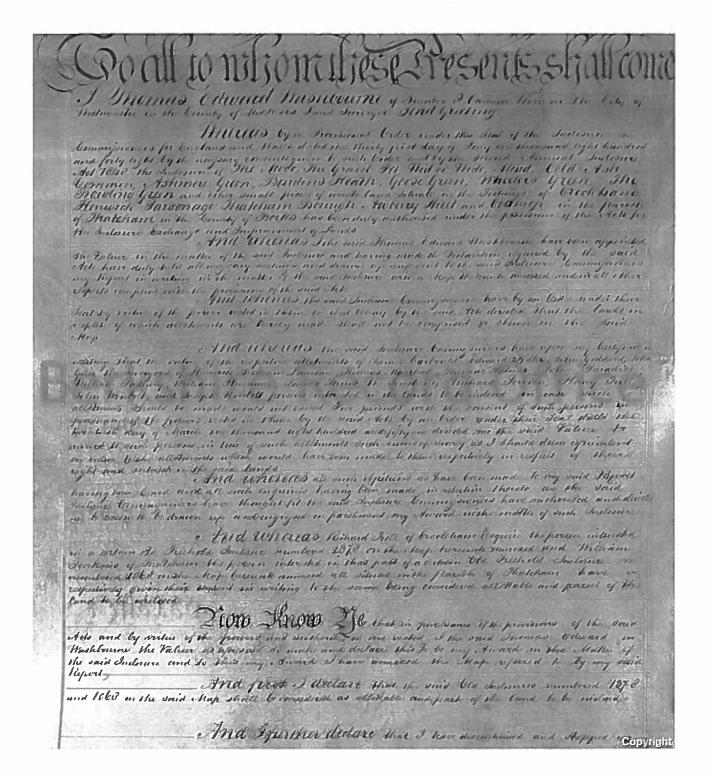
Section 15. Action 15. Action 16.

Cattle, in the context of rights of common of pasture, is not limited to bovine animals. See *Halsbury's Laws of England* (5th edition, 2009 reissue), Vol 13, para 436, note 1.

Commons Act 2006, ss 6, 18.

See definition of rights of common: ibid, s 61(1).

IN THE MATTER OF A REQUEST TO WEST BERKSHIRE DISTRICT COUNCIL AS COMMONS
REGISTRATION AUTHORITY TO MAKE A PROPOSAL UNDER THE COMMONS ACT 2006 TO DE-
REGISTER COMMON LAND KNOWN AS "THE CHILDREN'S CENTRE, LOWER WAY, THATCHAM"
REQUEST TO MAKE A PROPOSAL TO DE-REGISTER COMMON LAND
APPENDIX 10
Thatcham Inclosure Award 1852



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