

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date:	25 July 2018
Title:	Application to correct a mistake made by the commons registration authority at Broxhead Common, in the parish of Headley (Application No. 01/17)
Reference:	
Report From:	Director of Culture, Communities and Business Services

Contact name: Sylvia Seeliger

Tel: 01962 846349

Email: sylvia.seeliger@hants.gov.uk

1) Summary of information:

1.1. Hampshire County Council is the Commons Registration Authority ('CRA') for the purpose of exercising functions under the Commons Act 2006. An application has been made under section 19 of that Act, by a member of the public, to correct an alleged mistake made by the CRA in relation to the non-registration of common rights on 80 acres of land at Broxhead Common (CL 147) in 1978. The Registration Authority is required to make any required correction if it is shown that such a correction is necessary. Regulations relating to the processing of the application suggest that it should be submitted to the Planning Inspectorate for determination, and therefore this report is advisory, to give members of the Regulatory Committee information on the circumstances and processes involved.

2) Legal framework for the information:

2.1. S.19 COMMONS ACT 2006

Correction:

(1) A commons registration authority may amend its register of common land or town or village greens for any purpose referred to in subsection (2).

(2) Those purposes are—

(a) correcting a mistake made by the commons registration authority in making or amending an entry in the register;

(4) An amendment may be made by a commons registration authority—

(a) on its own initiative; or

(b) on the application of any person.

3) Purpose of report:

3.1. The purpose of this report is to advise members of the Regulatory Committee that the application has been made, and to set out the process by which it will be determined, for their information.

4) Applicant: Mrs. Maureen Comber, The Old Cottage, Frith End, Bordon, GU35 0QS, Honorary Secretary of the Broxhead Commoners Association (BCA)

5) Landowners: title absolute to the land in question lies with Mr. Anthony Whitfield, of Headley Wood Farm, Headley, Bordon, GU35 8SG, under title SH6984.

6) Description of the land (please refer to the map attached to this report):

6.1. The land which is the subject of the application ('the Land') is shown edged red on the plan annexed to this report. It consists of approximately 80 acres (32.37 hectares) of land, and is an irregularly-shaped piece of land to the east of the road A325. The land is comprised in the registered title number set out in paragraph 5.

7) The application:

7.1 The application was received on 10 July 2017. The application states that it is made under paragraph section 19(2)(a) of the Commons Act, which relates to a mistake made by the CRA at the time of registration. The application is appended as **Appendix 1** to this Report.

7.2 A number of documents were attached to the application as supporting material and these are attached at **Appendix 2**.

7.3 The receipt of the application was recorded and a unique number allocated to it, in this case 01/17.

8) Processing the application:

8.1. The Regulations require the CRA to give notice of the application to all interested parties, that is the landowner or his or her representative, the Planning Inspectorate ('PINs'), the local District Council, the local Member and all common rights holders. The notice was advertised on the County Council's notice portal, in the local press and three notices were put up on site, on 22 November 2017. The notice period for receipt of representations relating to the application expired on 5 January 2018.

8.2. The notice attracted 3 responses. The most substantial has been submitted by the representative, Mr. Edward Harris, of the landowner Mr. Whitfield, and it objects to the application on the grounds that it is fatally flawed, citing a Court of Appeal judgement of 1978. A response was sent by Ms Sophie Burr, supporting the application, but this concerns itself primarily with lack of access to the land and its overgrown state, and does not address any of the legal issues. A third representation was received from T.J. Plumbley, who appears to be acting on behalf of Alton Ramblers. This submission does address the history of the land and the application, and raises questions regarding ownership of the land and

what procedures required by the Court of Appeal judgement were carried out. The substantial objection submitted by Mr. Harris on behalf of the landowner has implications on how this application can be determined.

8.3. The Commons Registration (England) Regulations 2014, (the 'Regulations') set out how such an application is to be processed by the CRA. Section 26 of these Regulations, entitled '*Responsibility for determining applications and proposals*' addresses the question of what body is to determine whether the application meets the necessary legal tests. Section 26(2) states that '*in cases specified in paragraphs (3) and (4), a registration authority must refer to the Planning Inspectorate for determination by it – (a) any application made to the registration authority in accordance with these Regulations*'. The application, made under section 19(2)(a) of the Commons Act 2006, has been made according to the Regulations.

8.4. Section 26(3) further sets out details of those cases that must be referred to PINs for determination. These are firstly '*where the registration authority has an interest in the outcome of the application...such that there is unlikely to be confidence in the authority's ability impartially to determine it*', and secondly '*where a person having a legal interest in the land the subject of an application...has made (and not subsequently withdrawn) representations amounting to an objection in respect of the application..., and –*

(a) the application...is made under section 19(4) of the 2006 Act [Commons Act 2006] and seeks –

(i) to add land to, or to remove land from, a register; or

(ii) to correct an error as to the quantification of rights of common in a register;...

This application seeks to add land to the register, under section 26(3)(a)(i). Therefore, the other parts of section (3) and section (4) of the 2014 Regulations do not apply to this application.

8.5. Officers are advised that a person with a legal interest in the land covers the freeholder of the land, any leaseholder, trustee or mortgagee of the land, and those with rights of common over the land. An objection has been made by the freeholder of the land, who therefore has a valid legal interest in the outcome, and this falls under the scope of section 26(3)(a)(i), as outlined in the previous paragraph. Therefore, under this provision, the County Council must refer the application to PINs for determination under section 26(2), and is in the process of so doing. For the avoidance of doubt, Members should be aware that it is possible that PINs may decide that this application does not meet the criteria of section 26, in which case the matter would be returned to this Committee for determination in the exercise of its quasi-judicial function.

8.6 Therefore, in accordance with advice to registration authorities issued by Defra (see page 7 at <https://www.gov.uk/guidance/commons-registration-authorities-correct-mistakes>), this application can be processed by the CRA, but requires to be determined by the Planning Inspectorate. This report is for Members' information only, and the Committee is not required to make a determination of the application.

9) Summary of report of information for the Committee:

9.1 That an application has been made to add to the commons register for Hampshire 80 acres of land at Broxhead Common in the parish of Headley, in order to correct a mistake allegedly made by the CRA, and that this application is referred to the Planning Inspectorate for determination in the first instance, on the grounds that it meets the requirements of section 26(3) of the 2014 Regulations. There is a possibility that the Planning Inspectorate may take a different view, and that the application would then come back to this Committee for determination.

CORPORATE AND LEGAL INFORMATION ABOUT THIS DECISION:

Hampshire safer and more secure for all:	yes/no
Corporate Improvement plan link number (if appropriate):	
Maximising well-being:	yes/no
Corporate Improvement plan link number (if appropriate):	
Enhancing our quality of place:	yes/no
Corporate Improvement plan link number (if appropriate):	
OR	
<p>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 or not the commons register should be amended, or refer it to the Planning Inspectorate for determination where there is an objection from a person with a legal interest in the outcome.</p>	

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.)

(Quote list of documents here: e.g. list the relevant letters, memos, etc. and their location)

<u>Document</u>	<u>Location</u>
File: 01/17 Broxhead Common	Countryside Access Team Room 0.06 Castle Avenue Winchester SO23 8UL

IMPACT ASSESSMENTS:

1. Equality Duty

1.1. 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 under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

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

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

1.2. Equalities Impact Assessment:

2. Impact on Crime and Disorder:

2.1.

3. Climate Change:

- a) How does what is being proposed impact on our carbon footprint / energy consumption?
- b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

This report does not require impact assessments but, nevertheless, requires a decision because the County Council, in its capacity as Commons Registration Authority, has a legal duty to amend the register of town and village greens in the circumstances described in this report.