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Mr George Thompson  
Commons Registration Officer  
Herefordshire Council  
Franklin House  
4 Commercial Road  
Hereford  
HR1 2BB

Your Ref: 2011/CL/006  
Our Ref: COM 282  
Date: 20 August 2012

Dear Mr Thompson,

**COMMONS ACT 2006: SECTION 19(2)(a)**  
**BIRCHER COMMON CL57**

The decision in respect of the above proposal is enclosed so that Herefordshire Council, in its capacity as commons registration authority, may take any appropriate action in amending the register of common land and village greens.

Once an application has been determined, the Planning Inspectorate cannot comment further on the terms of the decision. There is no statutory provision for appeal against a decision but it can be challenged in the Courts within 3 months of the date of the decision letter. The procedure for this involves an application to the High Court for permission to apply for judicial review under the Supreme Court Rules.

Copies of the decision are also being sent to interested parties. They will be advised that any further queries regarding any necessary post-decision action should be addressed direct to the Council. The decision will also be posted on the Planning Portal.

Thank you for all your assistance during the application determination process.

Yours sincerely,

Willie Lengers  
Common Land Casework Team





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# Proposal Decision

Hearing held on 15 May 2012

**By Alan Beckett BA MSc MIPROW**

**An Inspector appointed by the Secretary of State pursuant to Regulation 4 of The Commons Registration (England) Regulations 2008 to hold a hearing and to determine the proposal.**

**Decision date: 20 June 2012**

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## **Proposal Ref: COM 282**

### **Bircher Common, Yarpole, Herefordshire**

- Register Unit: CL57
- Registration Authority: Herefordshire Council
- The proposal was made by Herefordshire Council ('the Council') under section 19 (4) (a) of the Commons Act 2006 ('the 2006 Act') for the purposes of Section 19 (2) (a) of the 2006 Act for the correction of a mistake made by the commons registration authority in making or amending an entry in the register of common land or town or village greens.

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### **Summary of Decision: The proposal is granted.**

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#### **Preliminary Matters**

1. In response to the statutory notice of the proposal, an objection was made on behalf of the National Trust ('the Trust') as the freehold owner of Bircher Common. The Trust's Rural Surveyor, Miss Watts, wished to make oral representations regarding the proposal as part of any site visit that would be made. In addition, Mrs Owen (the Solicitor acting for the owners and occupiers of the two parcels of land at issue) also wished to make oral representations on behalf of her clients. In such circumstances, it was felt appropriate to hold a hearing into the proposal, which was held at the Village Hall, Eardisland on 15 May 2012.
2. This proposal has been determined on the basis of the representations made by the parties at the hearing and the documents submitted as part of the proposal.

#### **The Application Land**

3. There was no dispute between the parties regarding the parcel of land opposite No 1 Stanley Bank which the Council proposes should be removed from the register map. This land (marked 'A' on the plan appended to this decision) is occupied by a garage. Parcel 'B' on the appended plan is bounded on its northern, western and southern sides by a post and half round timber fence and is open on the side which faces the property known as Glen View. The Trust acknowledges that the owner of Glen View, Mr Griffiths, is the freehold owner of parcel B, and has acknowledged in writing that Mr Griffiths' fenced area does not encroach upon Bircher Common<sup>1</sup>.

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<sup>1</sup> Letter from Burges Salmon to Mrs Owen dated 25 October 2001

4. It is the Council's case (and that of Mrs Owen on behalf of her clients) that when the predecessor commons registration authority (Herefordshire County Council) had drawn up the register map for CL57, it had included parcels A and B that had not formed part of the original land for which registration had been sought by the Trust.

### **The Statutory Requirements**

5. The proposal has been made in accordance with the provisions of section 19 (2) (a) of the 2006 Act. Section 19 (2) (a) of the 2006 Act provides that a Commons Registration Authority (CRA) may amend its register of common land to correct a mistake made by the CRA in making or amending an entry in the register. Section 19 (4) (a) permits a CRA to make amendments on its own initiative.
6. Section 19 (3) provides that for the purposes of section 19 references to a mistake include a mistaken omission and an unclear or ambiguous description. Section 19(5) provides that a mistake in the register may not be corrected if the authority considers that, by reason of reliance reasonably placed on the register by any person or for any other reason, it would in all the circumstances be unfair to do so.
7. The Commons Registration (England) Regulations 2008 ('the 2008 Regulations') set out the procedures to be followed. Paragraph 18 of the 2008 Regulations requires that the CRA must –
  - (a) prepare a statement in writing describing the proposal and explaining the justification for it;
  - (b) publish a notice of the proposal on its website;
  - (c) publish a notice of the proposal in one or more newspapers circulating in the relevant area as appears to it to be sufficient to secure adequate publicity;
  - (d) serve notice on (i) any person who is recorded in the register as having entitlement to a right of common over the whole or any part of the register unit to which the proposal relates; (ii) any commons council or other body representing the interests of persons with rights of common over land to which the proposal relates; and (iii) any owner of a right of common in gross which is exercisable over the whole or any part of the register unit to which the proposal relates.
8. The task of proving the case in support of the correction of the register rests with the body making the proposal, and the burden of proof is the normal, civil standard, namely, the balance of probabilities.

### **Reasons**

#### ***The Proposal***

9. The Council's statement regarding the proposal sets out the grounds on which it is considered that part of CL57 should be removed from the register map. The statement also lists the documentary evidence the Council has adduced in support of the proposal and is accompanied by a 1:1250 scale plan showing the land at issue. Notice of the proposal was published in the *Hereford Journal* on 27 April 2011 and was included in the Council's website at the same date. The

Council served notice of the proposal on the holders of rights on Bircher Common, on the Trust, relevant organisations and interested parties.

10. I am satisfied that the relevant provisions of the 2008 regulations in respect of the proposal have been met and conclude that the proposal has been duly made.

***Whether a mistake was made by the registration authority such that the register should be corrected***

11. An application to register Bircher Common as common land was made by the Trust on 8 September 1967. The plan appended to that application shows the boundary of the land for which registration was sought marked by a bold red line. Within the southern part of the land to be registered are four areas for which registration was not sought. Three are quite prominent whereas the fourth area is quite small but encompasses at least one building which is shown on the base map. Within this small fourth area are Parcels A and B which are the subject of this proposal.
12. It is the Council's case that the information contained in the map submitted by the Trust in 1967 was mistakenly transcribed onto the registration map for CL57 in that the whole of the land encompassed by the fourth of the parcels shown on the Trust's application map was included within the boundary of CL57. The register map for CL57 corresponds with the application map in relation to the three prominent areas excluded from the Trust's application, but the boundary of CL57 in the vicinity of the land the subject of the proposal at issue is unbroken and includes the land excluded from the common in the Trust's 1967 application plan.
13. The application to register Bircher Common was made by the Trust in its capacity as the freeholder of the common; registration was not sought for land not within the Trust's ownership. On that basis, it is highly likely that in showing a small area of land in the vicinity of the proposal land excluded from the registration application, the Trust was acknowledging that there was some land within that parcel for which registration was not sought.
14. It is known that Mr Griffiths purchased parcel B on 3 June 1966 and has been the freeholder of the land since that date. At the time of the Trust's application to register Bircher Common in September 1967, the Trust was not in possession of parcel B, a fact which lends weight to the contention that (despite the constraints of scale) the application map attempted to exclude from registration land in the vicinity of the proposal land.
15. It was Mrs Owen's case that when Mr Griffiths purchased Parcel B, the land had contained a number of pig sties. The base map used for both the Trust's 1967 application and the register map both show a building in the vicinity of Parcel B which is likely to have been the sties purchased by Mr Griffiths. I understand that at some point in time subsequent to his purchase, Mr Griffiths demolished the sties, levelled the ground and erected fencing on three sides of his land to create a turning area for his car.
16. It is not known how long the pig sties had stood on parcel B or how much of the land was occupied by those buildings, but it is probable that rights of common would not have been exercisable on some (if not all) of the land whilst it had contained the pig sties. Although the existence of the buildings on parcel B does not necessarily negate the existence of common rights over that land,

the presence of the sties at the time registration was sought suggests that rights of common were not exercised or exercisable over that parcel.

17. The Trust did not object to the removal of parcel A from the register map, and I understand that the garage is the successor to an earlier building that had stood on the site. It is likely therefore that rights of common would not have been exercisable over parcel A.
18. I concur with Mr Devlin that the land within the fourth excluded area shown on the application map appears to be greater than the land encompassed by Parcels A and B and would have included some of the Trust's own land. The application map is however drawn at a scale of 1:10,000 and the accurate depiction of two small plots of land of not more than 60m<sup>2</sup> would have been impossible at that scale. Nonetheless, the 1967 application map can be regarded as an acknowledgement by the Trust that there was some land within that fourth parcel for which registration was not sought.
19. In my view, not showing this fourth parcel (or any of the land within it) in the register map as being excluded from the common was an error made by the CRA when transcribing the boundary shown on the application map to the register map. The discrepancy between these maps provides convincing evidence of an error having been made, and is the kind of error identified in paragraph 9.9.2 of the relevant guidance<sup>2</sup> as being one which can be corrected under the provisions of section 19 (2) (a).
20. On a balance of probabilities, the inclusion of Parcels A and B as part of CL57 appears to have occurred as a result of a poor cartography when the entry on the Register map was copied from the application map submitted by the Trust. It follows that the register map should be corrected.

***Whether any party places or has placed reliance upon the register such that the correction of the entry would, in all the circumstances, be unfair***

21. The Trust does not place any reliance upon the commons register in relation to Parcels A and B. The Trust's principal concern with regard to Parcel B is that deregistration would remove the protection against development of the land afforded by it being part of the registered common, as the Trust did not wish to see any further building on the common. Mrs Owen stated that Mr Griffiths has used Parcel B as a place to turn before reversing his car into his garage; other family members used the land for the same purpose as did those members of the public who drove past Glen View only to find that the track stopped abruptly a little further to the west. Mrs Owen submitted that Mr Griffiths had no proposal to change his current use of the parcel B land.
22. If Parcel B were to be removed from the register map then any proposed change to the use of the land would be subject to the provisions of the prevailing legislation governing development and land use. If an application for development were to be put forward, the Trust would be able to make its views known to the appropriate planning authority as part of the consultations which would be carried out in relation to that application. However, the possibility that an application to build upon Parcel B at some indeterminate point in the future may be made is not a matter to which I can give any great weight in my determination of this proposal.

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<sup>2</sup> Guidance to commons registration authorities and the Planning Inspectorate for the pioneer implementation (version 1.43 September 2011)

23. Other than the Trust's view on the potential future development of the Parcel B land, no submissions have been made, nor has any evidence been submitted, from which I could conclude that the amendment of the register plan in the manner proposed by the Council would in the circumstances be unfair to any party.

### **Conclusions**

24. I conclude that the Council's predecessor authority (Herefordshire County Council) mistakenly included the land at Parcels A and B when compiling the register map for CL57. As the criteria set out in section 19 (2) (a) are met it follows that the two parcels of land shown edged red and marked 'A' and 'B' on the plan appended to this decision should be removed from registration unit CL57. Parcel A comprises the separately sited garage building opposite 1 Stanley Bank, Bircher Common; Parcel B comprises an enclosed turning area opposite Glen View, Stanley Bank, Bircher Common.

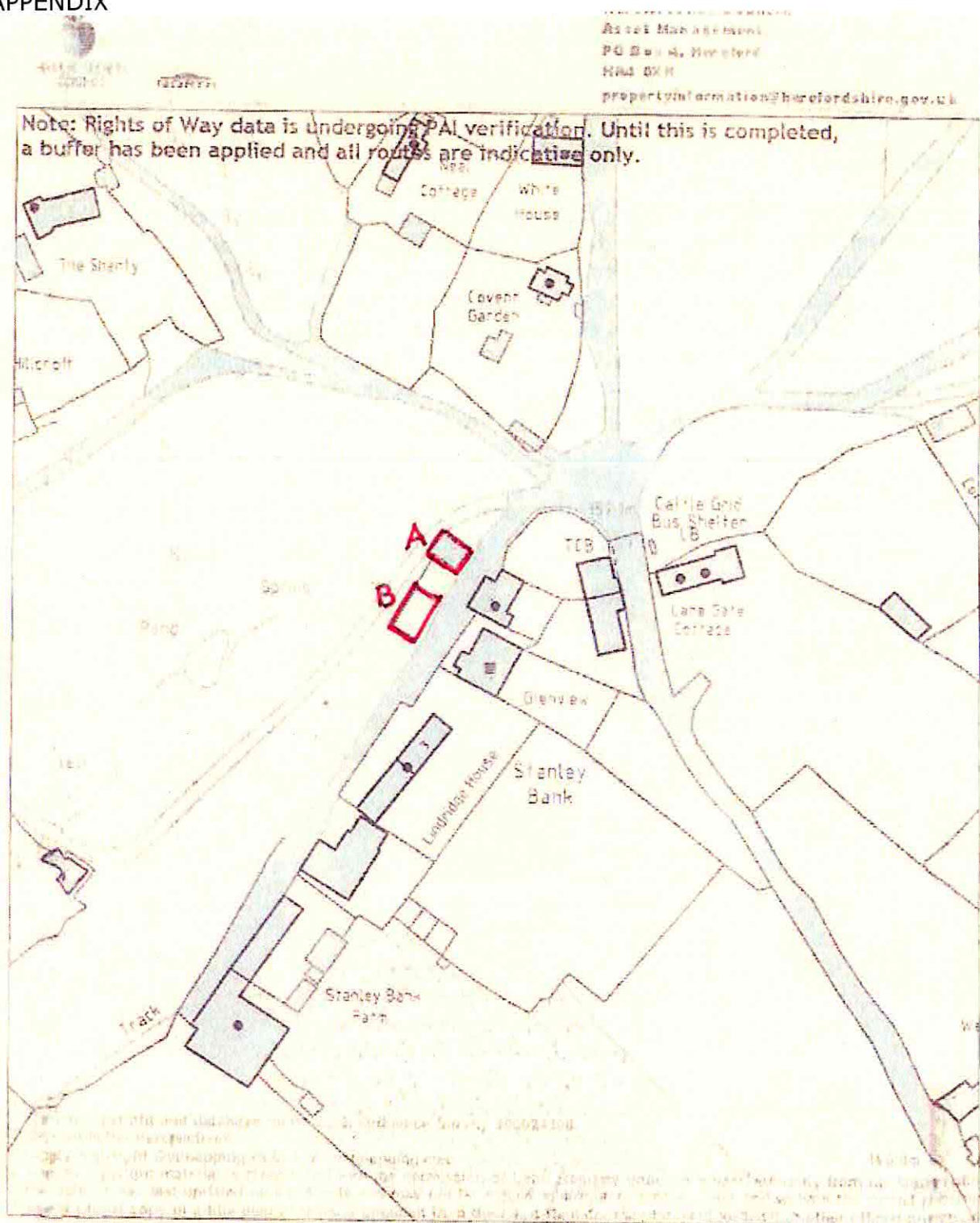
### **Formal Decision**

25. The proposal is granted and the land shown edged red on the plan attached to this decision shall be removed from the register of common land.

*Alan Beckett*

INSPECTOR

APPENDIX



Location: No 1 Stanley Bank and Glen View, Bircher Common

Description: Section 19 application

Please ask for: Commons Registration Office

Tel (Direct): 01432 281931

Map Scale: 1:1250 ; Map Centre OS Grid Reference: 348,510 0012054,260,114 0040099

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<http://www.exp/Exponare/A4P/print/Property/Services.aspx?PrintVoucher=35-8428-3798...> 16/05/2012



## **APPEARANCES**

### **For the Commons Registration Authority:**

Miss Helen Beale	Assistant Land Agent, Herefordshire Council, PO Box 4, Plough Lane, Hereford, HR4 0XH.
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### **For Mr C J B Griffiths and Mr & Mrs K Morgan:**

Mrs Gwyneth O. Owen	Solicitor, Upper Haven Cottage, Dilwyn, Hereford, HR4 8JE.
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### **For the National Trust:**

Miss Anna Watts	Rural Surveyor, Brockhampton Estate, Estate Office, Greenfields, Brockhampton, Bringsty, WR6 5TB
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Mr Hugh Devlin	Rural Surveyor
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### Hearing documents

1. Mrs Owen's notes on the chronology of the land in relation to Parcel B and a copy of a letter dated 25 October 2001 from Burges Salmon Solicitors to Mrs Owen.

