



21 JAN 2013

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George Thompson
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Your Ref: 2011/CL/003

Our Ref: COM 320

Date: 17 January 2013

Dear Mr Thompson,

**COMMONS ACT 2006: SECTION 19(4)(b)
CORRECTION OF THE REGISTER**

**YATTON HILL COMMON, HEREFORD
APPLICATION REFERENCE NUMBER COM 320**

The decision in respect of the above proposal is enclosed so that Hereford 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. It will also be posted on the Planning Inspectorate website.

Yours sincerely,

Willie Lengers
Common Land Casework Team

The Statutory Requirements

4. Section 19(4) of the 2006 Act provides that any person may apply to the commons registration authority to correct an alleged mistake in the register of common land or town or village greens. The Commons Registration (England) Regulations 2008 ('the 2008 Regulations') set out the procedures to be followed.
5. The application was made on 4 July 2011 by Herefordshire Council itself, and thus constitutes a proposal rather than an application. The application form indicates that it has been made for the purposes of Section 19(2)(a) of the 2006 Act which provides that an application (or a proposal) can be made to correct a mistake made by the commons registration authority in making or amending an entry in the register.
6. 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. An application must be made in accordance with the 2008 Regulations. Regulation 16 of the 2008 Regulations requires that an application must –
 - (a) be made in writing on a form provided by the registration authority to which the application is made; and
 - (b) be signed by, or by a representative of, every applicant who is an individual, and by the secretary or some other duly authorised officer of every applicant which is a body corporate or an unincorporated association.
8. In addition, paragraph 11 of Schedule 4 to the 2008 Regulations requires that an application made under section 19(4)(b) must include –
 - (a) a statement of the purpose of the application; namely the mistake in the register that has been identified by the applicant and the nature of the correction being sought;
 - (b) the number of the register unit and the number of the rights section entry in the register to which the application relates;
 - (c) evidence of the mistake or other matter in the register in respect of which the application seeks correction; and
 - (d) a description of the amendment sought in the register of common land.
9. The onus of proving the case in support of the correction of the register of common land rests with the person making the application or proposal, and the burden of proof is the normal, civil standard, namely, the balance of probabilities.

Reasons

The Proposal

10. The proposal seeks to remove the strip of land from the register on the basis that the commons registration authority ('the CRA') mistakenly included the area when preparing the revised register plan in 1971. The revised plan was prepared following an objection to the omission of some land from the



Application Decision

Hearing held on 3 January 2012

By Helen Slade MA FIPROW

Appointed by the Secretary of State for Environment, Food and Rural Affairs.

Decision date: 17 January 2013

Application Ref: COM 320

Name and location of Common: Yatton Hill Common

Register Unit: CL143

Registration Authority: Herefordshire Council

- The proposal, dated 4 July 2011 is made under section 19(4)(b) for the purposes of Section 19(2)(a) of the Commons Act 2006 ("the 2006 Act").
- The proposal is made by Herefordshire Council.
- The proposal is 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 green.

Summary of Decision: The proposal is allowed.

Preliminary Matters

1. I held a Hearing on Thursday 3 January 2013 at Aymestrey Village Hall, Herefordshire, having undertaken an unaccompanied site visit the previous afternoon. This is the second application in respect of Yatton Hill Common with which I have dealt and the land concerned is immediately adjacent to the land affected by the previous application. I am thus already familiar with the site and the issues involved.
2. The occupiers of the land affected in this case, Mr and Mrs M Davis, had indicated prior to the Hearing that they would not permit the objector (their neighbour, Mr A Watkins) onto their land for the purpose of any site visit. Owing to the nature of the application and my familiarity with the site, I did not consider it necessary to undertake a second site visit, and I was not requested to do so.

The Application Land

3. The proposal relates to a strip of land forming part of Ordnance Survey ('OS') plot number 905 on Yatton Hill, occupied as part of the property known as Yatton Hill Cottage. The affected parcel of land lies immediately to the west of the property known as Silver Birch Cottage. The land occupied by Silver Birch Cottage was the subject of my earlier decision (Reference COM 266 issued on 25 June 2012) which resulted in the removal from the register of the land concerned.

registered common, as shown on the provisional register plan prepared in 1968.

11. The proposal has been formally made by Herefordshire Council and advertised in accordance with the regulations. Mr Watkins' objection refers to the confusion caused by the advertisement, which made reference not only to land at Yatton Hill Cottage, but also to his land at Silver Birch Cottage. Furthermore the map shows Silver Birch Cottage in the wrong place, a fact which had previously been pointed out to the CRA and which had been corrected in respect of his own application. He also felt that the advertisement of the proposal had been inadequate.
12. Mr Thompson, on behalf of the CRA, stated that although the original intention of the proposal had been to include the removal of the whole of OS parcel 905 (including land occupied by Silver Birch Cottage), Mr and Mrs Watkins had subsequently been required to make a separate application as their curtilage appeared to extend beyond the OS parcel number. The CRA decided it was not appropriate for them to include that land in their own proposal. Mr and Mrs Watkins' application had to be made under different provisions of the 2006 Act (and was the subject of my previous decision COM 266).
13. Mr Thompson confirmed that the advertisement of the proposal had been done in accordance with the requirements of the regulations, and in fact notices had been placed at a number of locations on the common: an action not required by the regulations but carried out in order to be as open and transparent as possible. Several of the notices had been removed by persons unknown.
14. Mr Thompson acknowledged the mistaken location of Silver Birch Cottage on the map, and also acknowledged that, subsequent to changing their proposal, no further advertisement was published (to indicate the lesser area involved).
15. I consider that there was certainly scope for confusion in relation to the advertisement, and the base map used for it. However, due to the separate application made by Mr and Mrs Watkins in respect of Silver Birch Cottage, and owing to the fact that their application was determined before the present proposal was considered by the Planning Inspectorate, the CRA were somewhat overtaken by events. When submitting the proposal to the Planning Inspectorate, three plans were included clearly identifying the reduced area of land which the CRA now seeks to remove from the register on the basis of their own error.
16. I am satisfied that the proposal was advertised in accordance with the regulations, and that notice was served on the appropriate parties. Although I consider that the lack of clarity with regard to the extent of the proposal was regrettable, I do not find that any prejudice has been suffered by anyone as a consequence since it was clear to me at the Hearing that the parties were aware of the extent of the parcel of land affected by this proposal. I have therefore proceeded to determine the matter on the basis that the proposal has been properly made and advertised, and does not affect any land not shown on the original proposal.

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

17. Yatton Hill Common was the subject of a claim under the 1965 Act made by Mr Sidney Jones, Chairman of Aymestrey Parish Council, on 30 March 1968. The

application map was loosely drawn, showing a red line boundary superimposed onto an OS base map at a scale of 2½ inches to one mile. The area of common land identified for registration did not include any part of OS parcel 905.

18. The description of the land in the Land Section of the Commons Register ('CR') states that the area to be registered extended to 93 acres or thereabouts and comprised the OS numbered plots 904 and 1142 (part) as shown on the 1903/4 edition of the OS map at 1/2500 scale. The 1st edition of the register map, prepared by the CRA and which forms part of the CR, is also at 2½ inches to the mile and is more carefully drawn. It does not include any part of OS plot number 905 and therefore does not show the land affected by this proposal as being part of the registered common land.
19. A second entry on the Land Section of the CR indicates that the provisional registration was not challenged and became final on 1 October 1970, the CR being annotated to that effect on 16 March 1971. However despite being date stamped 7 May 1968 (the date of the provisional registration) it is further endorsed thus:

"This sheet was replaced by a fresh edition on 4/11/71".
20. On 11 November 1971 an additional entry was made onto the CR recording that an application had been made on 22 July 1971 by Captain T R Dunne, consequent on an objection (no. 103) made on 1 September 1970 in respect of an area hitherto excluded from the register unit. It records that all parties had agreed that the excluded area (part of OS parcel 1142) should be added to the Register Unit for Yatton Hill Common and it was duly done. The map relating to this amendment is marked as being the 2nd Edition of the Provisional Register Map and is dated 4 November 1971.
21. The copy of this map supplied by the Council is on a very faint OS base map and it is very difficult to interpret it accurately, but a careful examination shows that part of OS parcel 905 was included within the boundary of the common land and a small amendment was also made on the very northern boundary of the common.
22. Not surprisingly this sequence of events has produced confusion over the years, and indeed it does not appear to have been realised by the CRA that the second edition of the register map actually existed until investigations into alleged encroachments onto the common were being carried out in recent years.
23. Despite the fact that the written description of the registration unit (CL143) does not refer to the inclusion of any part of OS plot number 905 within the unit, the second edition of the registration map clearly does show the boundary of the common surrounding and including the whole of the land included in the current proposal and which forms part of OS plot 905. The entry on the Land Section of the CR was made on 11 November 1971 whilst the map was apparently amended on 4 November 1971.
24. Mr Thompson, for the CRA, explained that the mistake was 'so obviously an error by the Council' that the proposal was made to correct it. Mr Watkins, in his objection to the proposal, claimed that the Council had made a number of serious errors over the years, and he concurred, at the Hearing, that the

Council had clearly made a mistake when preparing the second register plan by including OS parcel 905.

25. Mr and Mrs Watkins also raised a number of other issues over the alleged actions (or inactions) of Herefordshire Council, regarding encroachments and other 'errors' on the register plan. However I made it clear at the Hearing, and Mr and Mrs Watkins accepted the fact, that those issues were not ones which lay within my remit. Other avenues are available to resolve or pursue those matters which Mr and Mrs Watkins felt had not yet been resolved or addressed.
26. Mr and Mrs Davis support the proposal, stating that to their knowledge the land concerned had always formed part of their curtilage and had never been part of the common. They therefore also agreed that the Council had made an error, but had no further evidence to offer.
27. I am satisfied that the evidence adduced by the CRA suggests that it is more likely than not that an error was made in transferring the extent of the registered common onto the second provisional map, and that the error was not identified until very recently, long after the map had become final. That error can only have been made by the CRA since they were responsible for preparing the revised map, and there is no evidence to support that any part of OS parcel 905 was ever intended to form part of the registered unit.

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

28. There is no evidence that the correction of the entry would be unfair in any way. Indeed it can only be right to remove the source of erroneous information which has caused considerable confusion over recent years.

Conclusions (including the form of the amendment)

29. I am satisfied that, had the remaining land forming OS parcel 905 not been removed from the proposal as a consequence of my earlier decision (COM 266) the whole of the land referred to in the advertisement of this proposal would have been eligible for deregistration. However, in the light of events, I conclude that the only part now affected by this proposal is the strip of land forming part of the curtilage of Yatton Hill Cottage, as identified on the plans accompanying the proposal.
30. For the purposes of clarity, the land to be deregistered is that defined by the boundaries shown on the OS map and indicated on the proposal plan as 'Land for removal from the Register'. Any land alleged to have been incorporated into the curtilage of either property (i.e. Silver Birch Cottage or Yatton Hill Cottage) in addition to the land included in this proposal¹, is unaffected by my decision.

Formal Decision

31. The proposal is allowed.

Helen Slade

INSPECTOR

¹ Or included within application reference COM 266, previously determined

APPEARANCES

For the Commons Registration Authority and Proposers

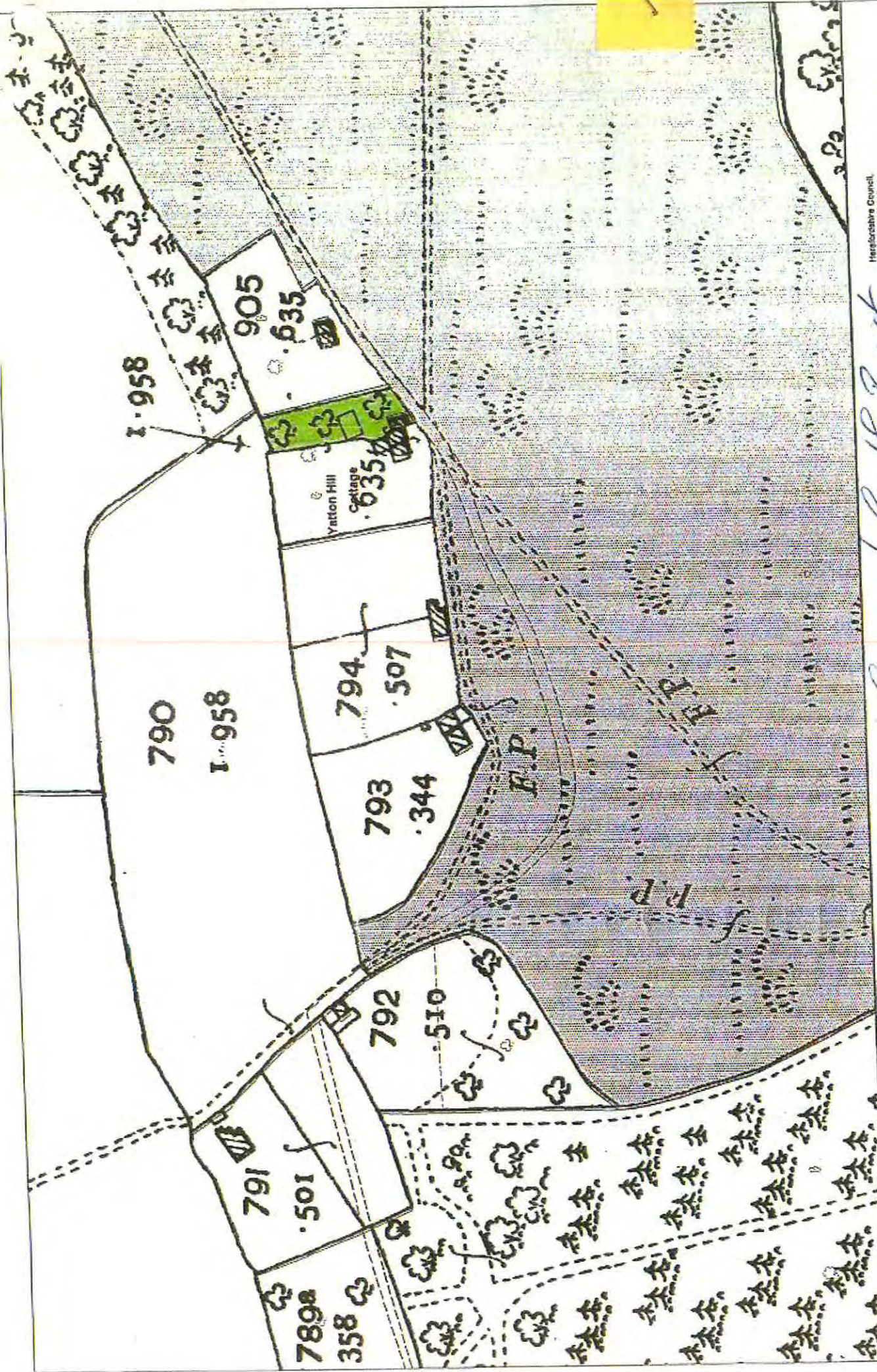
Mr E G Thompson
Miss H Beale

For the Objectors

Mr A Watkins
Mrs J Watkins

In support of the proposal

Mr M Davis
Mrs S Davis



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Green shaded area = Land for removal from the Register

NORTH

Map Location Title

Scale: 1: NOT TO SCALE



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