

**COMMONS ACT 2006 – SCHEDULE 2(6) – APPLICATION TO DE-REGISTER  
BUILDINGS WRONGLY REGISTERED AS COMMON LAND – THE POUND,  
WHITEPARISH  
APPLICATION NO.2021/01ACR**

**Purpose of Report**

1. To consider the evidence submitted regarding an application made under Schedule 2(6) of the Commons Act 2006 to de-register buildings which it is claimed are wrongly registered as Common Land, the Pound, Whiteparish, (application no.2021/01ACR).

**Relevance to the Council's Business Plan**

2. Working with the local community to provide a countryside access network fit for purpose, making Wiltshire an even better place to live, work and visit.

**Location Plan**

3. The parish of Whiteparish is located in south-east Wiltshire, 8 miles from Salisbury to the north-west; 14 miles from Southampton to the south-east; 19 miles from Winchester to the east and 8 miles from Romsey to the south-east. The main village is located alongside the main A27 road, with Common Road leading south and entering the New Forest National Park. The parish is on chalk in the north and the clays, sands and gravels of the Reading beds, London Clay and Bagshot beds in the south. The land slopes down to the south from the northern boundary of the parish of Dean Hill, to the Hampshire border, (Wiltshire Community History). Please see location plan at **Appendix 1.**

**Application Plan**

4. Please see **Appendix 2.**

**Photographs**

5. Please see **Appendix 3.**

## Aerial Photographs

6. Please see **Appendix 4**.

## Applicants and Registered Landowners

7. Mr and Mrs S Skeates  
[REDACTED]  
Common Road  
Whiteparish  
Salisbury  
Wiltshire, SP5 2[REDACTED]

## Legal Empowerment

8. Wiltshire Council is the Commons Registration Authority (CRA) for the Commons Registration Act 1965 and the Commons Act 2006.
9. The land which is the subject of the application was registered under the Commons Registration Act 1965 and the application to de-register the land is made under Section 22 and paragraph 6 of Schedule 2, of the Commons Act 2006. Paragraph 6 provides as follows:

*“6 (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 that 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) on the date of the provisional registration the land was covered by a building or was within the curtilage of a building;*
- (c) the provisional registration became final; and*
- (d) since the date of the provisional registration the land has at all times been, and still is, covered by a building or within the curtilage of a building.*

*(3) A commons registration authority may only remove land under sub-paragraph (1) acting on-*

- (a) the application of any person made before such date as regulations may specify; or*
- (b) a proposal made and published by the authority before such date as regulations may specify.”*

10. The Regulations are The Commons Registration (England) Regulations 2014, of which paragraph 14 of Schedule 4 sets out the time limits for making applications:  
  
*14(1) An application made under Schedule 2 to the 2006 Act, for the purpose of remedying non-registration or mistaken registration under the 1965 Act, must be made on or before*
  - (a) 31<sup>st</sup> December 2020, where the application is to an original registration authority; and*
  - (b) 15<sup>th</sup> March 2027, where the application is made to a 2014 registration authority.*
11. Wiltshire Council is neither an “original registration authority”, nor a “2014 registration authority”, but a “1965 registration authority” as defined in the Regulations and accordingly there is no time limit for applications made to the Council.
12. Paragraph 27 (1) of the Regulations sets out the material which the Council must consider in determining the application; this may be summarised as follows:
  - (a) the contents of the application, and any material accompanying it;
  - (b) any further information or evidence provided by the applicant in accordance with a direction by the Council;
  - (c) any written representations;
  - (d) any oral representations made;
  - (e) the findings made at a site inspection;
  - (f) where there is a public inquiry by an inspector, the evidence presented at the inquiry and the report of the inspector.
13. The standard of proof lies in the balance of probabilities i.e., that it is more likely than not that the land was covered by a building, or within the curtilage of a building at the time of the provisional registration as common land and at all times thereafter.

## **Background**

14. The Council has received an application under Schedule 2(6) of the Commons Act 2006 to de-register buildings at The Pound, off Common Road, Whiteparish, which it is claimed were wrongly registered as common land.
15. The area of land claimed to be wrongly registered (‘the Application Land’) covers an area of approximately 2,420 square metres, shown at **Appendix 2**, and includes:
  1. The workshop building (having a footprint of approximately 122 square metres);
  2. Areas of hardstanding to the south; east and north of the building;

3. Land comprising grass and trees to the north of the hardstanding area;
  4. Smaller building to the south of the workshop building.
16. The Commons Registration Act 1965 provided for the registration of common land by County Councils. Registration commenced on 2 January 1967 with a time limit for registration by 31 March 1970, extended to 31 July 1970.
  17. In the Register of Common Land, the Application Land forms part of Register entry no. CL7, Whiteparish Common, **Appendix 5**, which was provisionally registered on 10 April 1968, and which, being undisputed, became final on 1 October 1970.
  18. The application, dated 2 January 2021, has been accepted as being in order and was allocated application number 2021/01ACR on 16 March 2021 (the relevant date of the application being the date of receipt by the Council on 4 January 2021).
  19. Common land is generally privately owned land, which is subject to rights enjoyed by others, i.e., commoners, to the use or produce of the land. Under the Countryside and Rights of Way Act 2000, areas of common land were recorded as "Open Access Land", having a right of access for the whole of the public on foot.
  20. At part 5 of the application form, the applicant includes the following justification:

*"In order to apply under schedule 2(6) of the Commons Act 2006, it is necessary for the land to be provisionally registered under section 4 (Provisional registration) of the Commons Registration Act 1965, i.e. between 2<sup>nd</sup> January 1967 and 31<sup>st</sup> July 1970 and that on the date of the provisional registration, the land was covered by a building and since the provisional registration has at all times been and still is covered by a building. The application to register the land was 26<sup>th</sup> March 1968; the land was provisionally registered 10<sup>th</sup> April 1968. The register entry was undisputed and became final on 1<sup>st</sup> October 1970. On the date of the provisional registration, 10 April 1968, the land, at The Pound, was 'covered by a building' and the land at The Pound was within the curtilage of the building. Planning permission for the garage/maintenance workshop, at The Pound, was granted 12 October 1967 and garage erected before December 1967 and remains on the above site today."*

### **Public Consultation**

21. The CRA has complied with the requirements to serve notice of the application; publicise the application; make the application available for public

inspection and provide the applicant and objectors with opportunity to reply, as set out at paragraphs 21 and 23-25 of the Regulations. The following objections and representations have been received (please see correspondence in full at **Appendix 7**):

- 1) *Open Space Society (OSS), Mr H Craddock - E-mail 02/07/2021 (Objection)*
- 2) *Mr S Byrne – E-mail 20/05/2021 (Objection)*
- 3) *Mr S Byrne – E-mail 20/05/2021 (Objection)*
- 4) *Mr T King – E-mail 03/07/2021 (Objection)*
- 5) *Mr R Hughes, Economic Development and Planning, Wiltshire Council – E-mail 17/05/2021 (Representation)*
- 6) *Mr & Mrs S Skeates – Correspondence 21/07/2021 (Landowners and Applicants) (Support)*
- 7) *OSS, Mr H Craddock – email 03/08/2021 (Objection)*
- 8) *Mr & Mrs S Skeates – Correspondence 01/09/2021 (Support)*
- 9) *OSS, H Craddock – E-mail 04/10/2021 (Objection)*
- 10) *Mr & Mrs S Skeates – Correspondence 26/10/21 (Support)*
- 11) *OSS, Mr H Craddock – E-mail 25/11/2021 (Objection)*
- 12) *Mr & Mrs S Skeates – Correspondence 08/12/2021 (Support)*

### **Main Considerations**

22. At Schedule 2, paragraph 6 of the Commons Act 2006, each of the legal tests set out must be met in order for land to be successfully de-registered, in which case de-registration is mandatory:
  - (a) *the land was provisionally registered as common land under section 4 of the 1965 Act;*
  - (b) *on the date of the provisional registration the land was covered by a building or was within the curtilage of a building;*
  - (c) *the provisional registration became final; and*
  - (d) *since the date of the provisional registration the land has at all times been, and still is, covered by a building or within the curtilage of a building.”*
23. A detailed consideration of the evidence in this case and the legal tests for the de-registration of buildings wrongly registered as common land, under Schedule 2(6) of the Commons Act 2006, is included at **Appendix 10**.
24. Officers are satisfied that the land identified as Area 2, (**Appendix 11**), has at all times been and still is, covered by a building or within the curtilage of a building, maintaining its relationship with the building throughout the relevant period for the accommodation of the parking/turning area; access to the building from Common Road and part of the visibility splay necessary for the safe use of the building and set out within the planning conditions for change of use of the site in 1967 and which are still relevant. Therefore, the legal tests, as set out at Schedule 2(6)(2) of the Commons Act 2006, are met over

this part of the application area (Area 2), as the only part of the application area which is capable of de-registration, please see detailed discussion at **Appendix 10**.

### **Overview and Scrutiny Engagement**

25. Overview and Scrutiny engagement is not required in this case. The CRA must follow the statutory procedure set out in the Commons Registration (England) Regulations 2014.

### **Safeguarding Considerations**

26. Considerations relating to safeguarding anyone affected by the de-registration of the land as Common Land under Schedule 2(6) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

### **Public Health Implications**

27. Considerations relating to the public health implications of the de-registration of the land as Common Land under Schedule 2(6) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

### **Corporate Procurement Implications**

28. Where land is de-registered / not de-registered as Common Land, there are opportunities for expenditure to occur and these are considered at paragraphs 32 and 33 of this report.

### **Environmental and Climate Change Impact of the Proposal**

29. Considerations relating the environmental or climate change impact of the de-registration of the land as Common Land under Schedule 2(6) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

### **Equalities Impact of the Proposal**

30. Considerations relating to the equalities impact of the de-registration of the land as Common Land under Schedule 2 (6) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

## **Risk Assessment**

31. Wiltshire Council, as the CRA, has a duty to process applications made under Schedule 2(6) of the Commons Act 2006 to de-register buildings wrongly registered as Common Land, in a fair and reasonable manner. If the CRA fails to pursue its duty it is liable to complaints being submitted through the Council's complaints procedure, potentially leading to complaints to the Local Government Ombudsman. Ultimately, a request for judicial review could be made with the risk of a significant costs order being made against the CRA if it is found to have made errors in processing the application or found to have determined the application in an unlawful manner.

## **Financial Implications**

32. The Council is able to charge a fee for processing applications made under Schedule 2(6) of the Commons Act 2006, in line with its published fees table. These costs have been paid by the applicant. The costs to the applicant could increase if the application is forwarded to the Planning Inspectorate to hold a public inquiry in certain circumstances, i.e. where the CRA has an interest in the outcome of the application such that there is unlikely to be confidence in the authority's ability to determine the application impartially; or where there is objection to the application from any person having a legal interest in the land, (paragraph 26(3) Regulations); however, these circumstances are not applicable in this case. The CRA has served notice of the application on those parties specified within the Regulations, including properties to which the recorded rights over the land are attached, as set out in the Rights Section of the register entry for CL7, Whiteparish Common. None of those parties having a recorded right over the land have objected to the application.
33. The Commons Act 2006 makes no provision for statutory appeal by any of the interested parties against the determination of the CRA, (or the Planning Inspectorate); however, it is open to all parties to apply to the High Court for judicial review of the decision of the CRA, whether that is to de-register / not de-register the land, for which the permission of the court is required and the application to challenge the decision must be made within three months of the date of the decision of the CRA. Applications of this nature focus closely on the procedure used in the decision-making process. To avoid the risk of the significant costs of defending a legal challenge it is important that the CRA adopts the proper decision-making process in dealing with this application.

## **Legal Implications**

34. This application does not require referral to the Planning Inspectorate for determination, as set out at paragraph 32 above.

35. Under paragraph 27(2) of the Regulations, it is open to the authority to decide that a public inquiry is to be held in relation to any application or proposal; however, the only requirement upon the CRA is to give the applicant opportunity to make their case before finalising the decision, as set out in DEFRA guidance: “Commons registrations authorities: applications and proposals – How to deal with applications and proposals, amend your registers of common land and town and village greens, and set fees.”:

***“Hearings and inquiries***

*If you’re thinking of refusing an application, you must give the applicant an opportunity to make their case to you before finalising your decision. You must allow anyone else to make their case to you if their civil rights would be affected by your decision. They can do this by talking to you in person or on the phone. This applies whether you grant the application or refuse it.*

*You can appoint an independent inspector (such as a barrister) to hold a public inquiry. If you decide to hold an inquiry into applications and proposals (e.g., if they are likely to generate controversy) then you must appoint an inspector to oversee the inquiry.”*

36. At paragraph 27(4) of the Regulations, the determining authority may, if it thinks necessary to enable an application or proposal to be determined, invite further written representations about any specified matter from the applicant; a person who has made representations, or any other person.
37. Paragraph 27(7), as set out below, makes provision for oral representation by the interested parties and it is considered that the public participation element of the Area Planning Committee meets this requirement, without the need to hold a public inquiry regarding the evidence. Paragraphs 27(6) and (7) state:
- “(6) Paragraph (7) applies in relation to any application or proposal which the determining authority decides to determine without holding a public inquiry or (where the Planning Inspectorate is the determining authority) a hearing in accordance with regulation 32.*
- (7) The determining authority-*
- (a) may not refuse an application without first offering the applicant an opportunity to make oral representations; and*
  - (b) may not grant or refuse an application or proposal without first offering any person (other than the applicant) for whom the grant or refusal (as the case may be) would represent a determination of that person’s civil rights an opportunity to make oral representations.”*



38. Where the CRA proposes to de-register the application land only in part, without holding a public inquiry, as at paragraph 27(7) above, the CRA may not refuse or grant an application without first offering the applicant or any person, opportunity to make oral representations. Opportunity to make oral representations will be available to all parties at the Southern Area Planning Committee meeting at which this application will be considered and the debate to follow will consider the oral representations made, meeting the requirements of paragraph 27(7) of the Regulations. The meeting may be adjourned, if necessary, following the oral representations, for consideration in a final report to be considered by the Area Planning Committee at a later date.

### **Options Considered**

39. The options available to Wiltshire Council, as the CRA, are as follows:
- (i) To de-register the application land in full, where the legal tests for the de-registration of buildings wrongly registered as common land, as set out at Schedule 2(6) of the Commons Act 2006, are met in full over the whole of the application area.
  - (ii) To de-register the application land in part, where the legal tests for the de-registration of buildings wrongly registered as common land, as set out at Schedule 2(6) of the Commons Act 2006, are met in full only over part of the application area.
  - (iii) To refuse to de-register the application land, where the legal tests for the de-registration of buildings wrongly registered as common land, as set out at Schedule 2(6) of the Commons Act 2006, are not met in full over the whole of the application area.
  - (iv) To hold a public inquiry to consider the evidence relating to the application.

### **Reasons for Proposal**

40. The legal requirements as set out under paragraph 6 of Schedule 2 of the Commons Act 2006, i.e. the de-registration of buildings wrongly registered as common land, are met in the following in this application:
- (i) Part of the land at The Pound, Whiteparish, subject to the application was provisionally registered as common land on 10 April 1968, (register entry no.CL.7, Whiteparish Common). The registration of the land became final on 1 October 1970, and this is not disputed.
  - (ii) Part of the application land was covered by a building and its curtilage at the time of provisional registration. Planning for the workshop building

subject to this application was granted in October 1967 and the building was erected before the end of 1967, i.e. before the provisional registration of the land in 1968. There is no dispute of the date the building was in place on the land and no evidence to suggest that the workshop building was not present at the time of provisional registration, however, there is dispute regarding the extent of curtilage of the building.

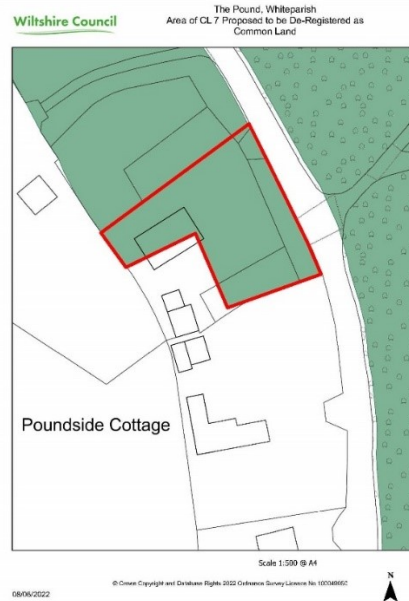
(iii) Part of the application land has been covered by a building and its curtilage at all times since provisional registration and still is, the period in question being April 1968 – present day. Although Mr King disputes continuous use of the building throughout this period, there is no requirement within the Act to consider continuous use, just that the building and/or its curtilage covered the land during this period, of which there is no dispute and no evidence to the contrary. There is dispute regarding the extent of the curtilage of the building.

41. Having considered the available evidence, Officers do not consider that the whole of the application area was, at provisional registration, covered by a building and its curtilage and has remained so. The CRA concludes that where the subject of this application is the garage/workshop building and its curtilage, it is only possible to consider the curtilage of this building to be that area included within the planning applications/consents for change of use of The Pound site and erection of the workshop building at The Pound, as an area so intimately associated with the building as to lead to the conclusion that it forms part and parcel of the building. This relationship between the extended area of the application land, for the full period from provisional registration and at all times since, has not been demonstrated. Therefore, it is proposed that the application to de-register land as common land be granted only in part over that part of the land subject to the successful planning applications in 1967 and excluding that area of the application land not included as part of Common Land Register Unit CL.7, Whiteparish Common, as shown on the plan at paragraph 43 below.
42. If it is determined to de-register the application land only in part, the CRA will give effect to the determination in the appropriate register by deletion and give written notice of the determination to the Applicant and every person who made representations regarding the application and publish the decision on its website, giving reasons for the decision, as required at paragraph 36 of the Regulations.

### **Proposal**

43. Based on the evidence, that the land at The Pound, Whiteparish, currently registered as Common Land, part of Register Entry no.CL7, Whiteparish Common and subject to application made under Schedule 2(6) of the Commons Act 2006 to de-register buildings wrongly registered as common

land, be part de-registered over that part of the application area which is covered by a building or the curtilage of a building, for the reasons set out at paragraphs 40 and 41 above, as shown outlined in red on the plan below:



44. Where the CRA does not intend to hold a public inquiry, the Applicant and other parties be given opportunity to make oral submissions regarding the proposal, (as per paragraph 27(7) of the Regulations), to the Southern Area Planning Committee. The debate to follow will consider any oral submissions made, or alternatively the meeting may be adjourned for the submissions to be considered in a report and recommendation to the Committee at a later date.

**Samantha Howell**

Director of Highways and Transport

Report Author:

**Janice Green**

Senior Definitive Map Officer

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## Appendices:

**Appendix 1** – Location Plan

**Appendix 2** – Application Plan

**Appendix 3** – Photographs of Application Land

**Appendix 4** – Aerial Photographs

**Appendix 5** – CL7 Register Entry

**Appendix 6** – Application

**Appendix 7** – Correspondence:

- i) Mr R Hughes (Economic Development and Planning, Wiltshire Council) – 17 May 2021

- ii) Mr S Byrne – 20 May 2021
- iii) Mr S Byrne – 20 May 2021
- iv) Mr H Craddock (Open Spaces Society (OSS)) – 2 July 2021
- v) Mr T King – 3 July 2021
- vi) Mr & Mrs S Skeates – 21 July 2021
- vii) Mr H Craddock (OSS) – 3 August 2021
- viii) Mr & Mrs S Skeates – 1 September 2021
- ix) Mr H Craddock (OSS) – 4 October 2021
- x) Mr & Mrs Skeates – 26 October 2021
- xi) Mr H Craddock (OSS) – 25 November 2021
- xii) Mr & Mrs Skeates – 8 December 2021

**Appendix 8** – Curtilage Evidence

**Appendix 9** – 1967 Planning Documents: i) 6759/10935

ii) 7085/11434

**Appendix 10** – Officers Consideration of the Legal Tests

**Appendix 11** – Application Land – Areas 1 - 4