



**BURGES  
SALMON**

Mr Trevor Slack  
Wiltshire Council  
County Hall  
Trowbridge  
Wiltshire  
BA14 8JN

Also via email

Our ref: SS19/JB13/44642.1/SUTHE

Your ref:

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sarah.sutherland@burgess-salmon.com

3 November 2015

Dear Mr Slack

### **Deregistration of common land**

Further to recent correspondence, please see attached application to deregister common land at Herrington House, submitted on behalf of my client Gerard Downes. This application is made under paragraphs 6 and 7 of the Commons Act 2006 and comprises:

1. Signed application form, plan and letters of consent;
2. Sworn statutory declaration of the Applicant;
3. Supporting statement.

Regulation 17 of the Commons Registration (England) Regulations 2014 states that an application should be accompanied by a reasonable fee (if any) specified for an application of that type by the registration authority to which it is submitted. We have requested confirmation of the applicable fee but have not received this to date. This application is therefore submitted on the basis that there is no fee payable, however if a fee does apply, please confirm this and we will notify our client.

In addition, as per our previous correspondence, we have submitted one form in respect of both paragraphs with supporting evidence, however if you require us to submit two application forms, please let us know and we will do so. We are also happy to supply additional copies of the application documents, if required.

Our client's property is currently under offer as he is in the process of selling it and we would therefore be grateful if you could validate and determine this application at your earliest convenience.

Kindly acknowledge receipt of this application.

Yours sincerely

Sarah Sutherland  
Senior Associate

WORK\24956776\1

Also at: 6 New Street Square, London, EC4A 3BF  
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IN PEOPLE** | Gold

## Commons Act 2006: Schedule 2

# Application to correct non-registration or mistaken registration

This section is for office use only

Official stamp

Application number

Register unit number  
allocated at registration  
(for missed commons  
only)

Applicants are advised to read 'Part 1 of the Commons Act 2006: Guidance to applicants' and to note:

- Any person can apply under Schedule 2 to the Commons Act 2006.
- All applicants should complete boxes 1-10.
- Applications must be submitted by a prescribed deadline. From that date onwards no further applications can be submitted. Ask the registration authority for details.
- You will be required to pay a fee unless your application is submitted under paragraph 2, 3, 4 or 5 of Schedule 2. Ask the registration authority for details. You would have to pay a separate fee should your application relate to any of paragraphs 6 to 9 of Schedule 2 and be referred to the Planning Inspectorate.

### Note 1

Insert name  
of commons  
registration  
authority.

### 1. Commons Registration Authority

To the: *Wiltshire Council*

Tick the box to confirm that you have:

enclosed the appropriate fee for this application: *(see covering letter)*

or

have applied under paragraph 2, 3, 4 or 5, so no fee has been enclosed:

**Note 2**

If there is more than one applicant, list all their names and addresses in full. Use a separate sheet if necessary. State the full title of the organisation if the applicant is a body corporate or an unincorporated association. If you supply an email address in the box provided, you may receive communications from the registration authority or other persons (e.g. objectors) via email. If box 3 is not completed all correspondence and notices will be sent to the first named applicant.

**Note 3**

This box should be completed if a representative, e.g. a solicitor, is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here. If you supply an email address in the box provided, the representative may receive communications from the registration authority or other persons (e.g. objectors) via email.

**2. Name and address of the applicant**

Name:

Gerard John Mytton Downes

Postal address:

Hemington House, Whiteparish, Salisbury

Postcode SP5 2RD

Telephone number:

01794 884552

Fax number:

E-mail address:

gjmdownes@gmail.com

**3. Name and address of representative, if any**

Name:

Sarah Sutherland

Firm:

Borges Salmon LLP

Postal address:

One Glass Wharf, Bristol

Postcode BS2 0ZX

Telephone number:

0117 307 6964

Fax number:

E-mail address:

sarah.sutherland@borges-salmon.com

**Note 4**

For further details of the requirements of an application refer to Schedule 4, paragraph 14 to the Commons Registration (England) Regulations 2014.

**4. Basis of application for correction and qualifying criteria**

Tick one of the following boxes to indicate the purpose for which you are applying under Schedule 2 of the Commons Act 2006.

- To register land as common land (paragraph 2):
- To register land as a town or village green (paragraph 3):
- To register waste land of a manor as common land (paragraph 4):
- To deregister common land as a town or village green (paragraph 5):
- To deregister a building wrongly registered as common land (paragraph 6):
- To deregister any other land wrongly registered as common land (paragraph 7):
- To deregister a building wrongly registered as town or village green (paragraph 8):
- To deregister any other land wrongly registered as town or village green (paragraph 9):

Please specify the register unit number(s) (if any) to which this application relates:

CL7

**Note 5**

Explain why the land should be registered or, as the case may be, deregistered.

**5. Description of the reason for applying to correct the register:**

Please see attached supporting statement and statutory declaration of the applicant.

**Note 6**

You must provide an Ordnance map of the land relevant to your application. The relevant area must be hatched in blue. The map must be at a scale of at least 1:2,500, or 1:10,560 if the land is wholly or predominantly moorland. Give a grid reference or other identifying detail.

**Note 7**

This can include any written declarations sent to the applicant (i.e. a letter), and any such declaration made on the form itself.

If your application is to register common land or a town or village green and part of the land is covered by a building or is within the curtilage of a building, you will need to obtain the consent of the landowner.

**6. Description of land**

Name by which the land is usually known:

Land to the south of Hemington House

Location:

Grid reference SU2531 2245

Tick the box to confirm that you have attached an Ordnance map of the land:



**7. Declarations of consent**

The land is owned by the applicant, his wife Davina Claire Downes and Jasmine Trustees Limited.  
Copies of letters from them confirming they consent to this application being made are attached

**Note 8**

List all supporting documents and maps accompanying the application, including if relevant any written consents. This will include a copy of any relevant enactment referred to in paragraphs 2(2)(b) or 3(2)(a) of Schedule 2 to the Commons Act 2006. There is no need to submit copies of documents issued by the registration authority or to which it was a party but they should still be listed. Use a separate sheet if necessary.

**Note 9**

List any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.

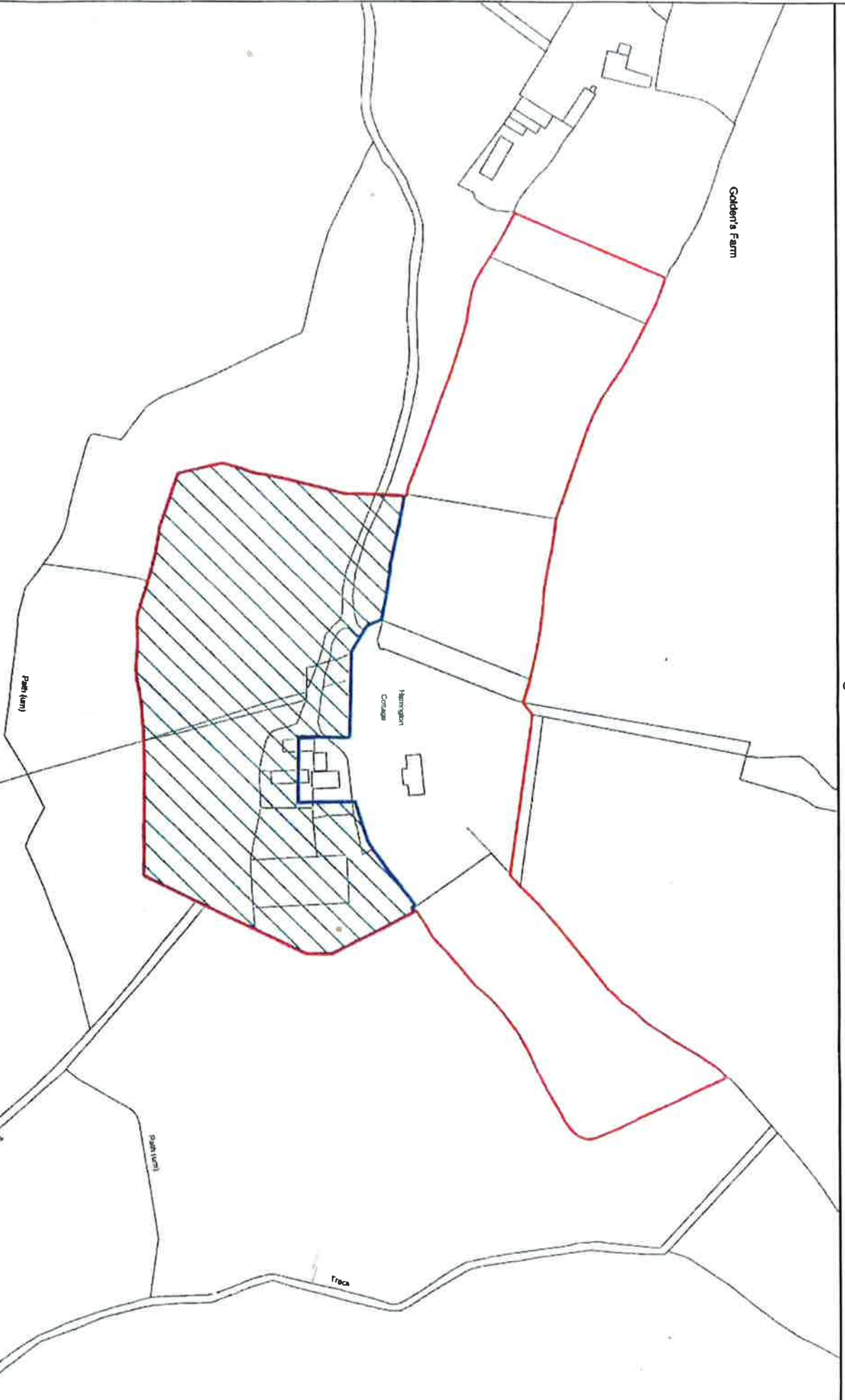
**8. Supporting documentation**

Statutory declaration of the applicant dated 30/10/15 and all Exhibits

**9. Any other information relating to the application**

Please see attached supporting statement

Herrington House



Produced by:  
Mapping and GIS Department  
Knight Frank LLP  
22 High Street  
Manchester, M1 2LN  
(0) 1482 888208 (0) 1482 889205  
(0) 1482 889208 (www.knightfrank.com)



Grid Reference - SU2331 2245

	Scale	1:250 @ A3
	Client Ref	231015 CW
<b>Title</b>		
Herrington House		
<small>This Plan is prepared by Knight Frank LLP (incorporated in England) for the purposes of the Land Registration Act 2002. It is not intended to constitute an offer of any financial product or service. It is not intended to be relied upon as a basis for any investment decision. It is not intended to be used for any other purpose. It is not intended to be used for any other purpose. It is not intended to be used for any other purpose.</small>		

<b>Note 10</b> <i>The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or an unincorporated association.</i>	<b>10. Signature</b>  Date: <input data-bbox="592 264 1479 333" type="text" value="03/11/15"/>  Signatures: <input data-bbox="592 383 1479 629" type="text" value="Buges Salmon LLP"/>
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**REMINDER TO APPLICANT**

**You are responsible for telling the truth in presenting the application and accompanying evidence. You may commit a criminal offence if you deliberately provide misleading or untrue evidence and if you do so you may be prosecuted.**

**You are advised to keep a copy of the application and all associated documentation.**

**Data Protection Act 1998**

*The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the commons registration authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.*

*A copy of this form and any accompanying documents may be disclosed upon receipt of a request for information under the Environmental Information Regulations 2004 or the Freedom of Information Act 2000.*



HERRINGTON HOUSE

WHITEPARISH

SALISBURY SP5 2RD

For the attention of Sarah Sutherland  
Borges Salmon  
One Glass Wharf  
Bristol  
BS2 0ZX

2nd November 2015

Dear Sirs

I understand that you are submitting an application to Wiltshire Council to deregister land at Herrington House, which is owned jointly by Gerard Downes, Jasmine Trustees Limited and myself, on behalf of my husband Gerard Downes. The application is being made under Schedule 2 paragraphs 6 and 7 of the Commons Act 2006 and the land which is the subject of the application is the land hatched blue on the plan attached to this letter.

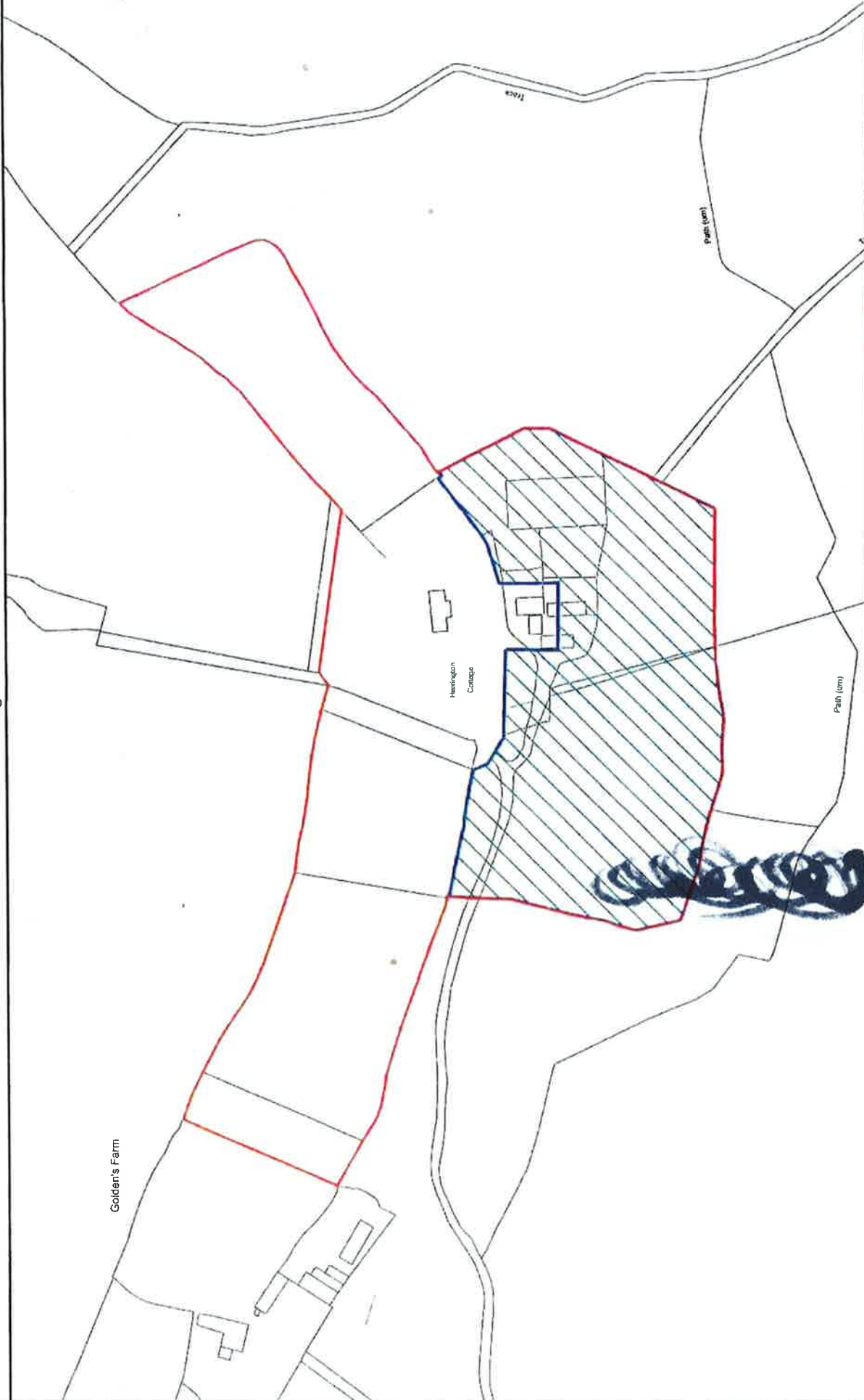
I confirm that I consent to this application being submitted for the purposes of part 7 of application form CA13.

Yours sincerely



Davina Claire Downes

Herrington House



Produced by:  
Mapping and GIS Department  
Ramsbury House, 21 High Street  
Hungerford, Berkshire, RG17 0NF  
01448 686304, 01448 686305  
e) mapping@knightfrank.com



Grid Reference - SU2531 2245



Plot No. 23.1015 CW 1:1250 @ A3  
7M<sup>2</sup> Herrington House

This Plan is a preliminary plan and is not intended to be used as a legal document. It is subject to change without notice. The information contained herein is for general information only and does not constitute an offer of any financial product. For more information, please contact your local branch office.

# Jasmine

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telefax: +44 1 534 766637

E.Mail: <recipient>@lutea.com

For the attention of Sarah Sutherland  
Burgess Salmon  
One Glass Wharf  
Bristol  
BS2 0ZX

Date: 3<sup>rd</sup> November 2015

Dear Sirs

We understand that you are submitting an application to Wiltshire Council to deregister land at Herrington House, which is owned jointly by Gerard Downes, his wife Davina Claire Downes and Jasmine Trustees Limited, on behalf of Gerard Downes. The application is being submitted under Schedule 2, paragraphs 6 and 7 of the Commons Act 2006 and the land which is the subject of the application is the land hatched blue on the plan attached to this letter.

I confirm on behalf of the Trustees that we consent to this application being submitted for the purposes of part 7 of application form CA13.

Yours sincerely



Nicola Hodge

on behalf of Jasmine Trustees Limited

*Jasmine Trustees Limited*

WORK\24957110\Registered Office: P.O. Box 675, 9 Burrard Street, St. Helier, Jersey, JE4 8YQ  
Regulated by the Jersey Financial Services Commission in the carrying on of Trust Company Business

44642.1

Herrington House

Golden's Farm

Herrington  
Cottage

Track

Path (cm)

Field (cm)

Sheet No. 23:10:15 CW Date 1:12:00 @ A3

Title Herrington House



This Plan is submitted for planning and other purposes. It is not to be used as a basis for any other purpose. The accuracy of the Plan is not guaranteed. The Plan is the property of Knight Frank and is not to be reproduced without their written consent.

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Application for Deregistration of Common Land  
Land at Herrington House, Whiteparish, Salisbury, SP5 2RD  
**Supporting Statement**

## **1 BACKGROUND**

- 1.1 The Applicant, Gerard John Mytton Downes, is the registered proprietor of land at Herrington House, Whiteparish, Salisbury, SP5 2RD along with his wife Davina Claire Downes and Jasmine Trustees Limited.
- 1.2 Part of the Applicant's land to the South of Herrington House is registered as common land. The accompanying plan shows the area of land owned by the Applicant edged in red ("the Property") and the land registered as common land hatched blue ("the Registered Land"). The Registered Land consists of 2-3 acres which comprises part of some outbuildings and their curtilage, an access track, a tennis court and garden to the main house and fields which the Applicant uses for grazing sheep. The Applicant's statutory declaration dated 30 October 2015 contains evidence relating to the historic use of the property.
- 1.3 The Registered Land was registered as part of Whiteparish Common. The register of common land, at Exhibit GD3 of the Applicant's Statutory Declaration ("the Commons Register") shows that Whiteparish Common was provisionally registered under the Commons Registration Act 1965 on 10 April 1968 and the registration became final on 22 March 1971.
- 1.4 The Applicant believes that the Registered Land was wrongly registered as common land and is therefore submitting an application to deregister it under Schedule 2, paragraphs 6 and 7 of the Commons Act 2006 ("the Act").
- 1.5 The onus of proof is on the Applicant to prove each of the elements of the tests arising under each of these paragraphs on the balance of probabilities.

## **2 THE STATUTORY BASIS FOR AN APPLICATION TO DEREGISTER BUILDINGS WRONGLY REGISTERED AS COMMON LAND (SCHEDULE 2, PARAGRAPH 6 OF THE ACT)**

- 2.1 This application is made under paragraph 6 of Schedule 2 in respect of that part of the Registered Land which is covered by the outbuildings and their curtilage, the access track, tennis court and garden to the main house.
- 2.2 Paragraph 6 states that '*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.*'
- 2.3 For paragraph 6 to apply, the requirements are as follows:
  - (a) the land must have been provisionally registered between 2 January 1967 and 31 July 1970;
  - (b) the registration must have become final;
  - (c) when it was provisionally registered, the land must have been covered by a building or within the curtilage of building; and
  - (d) the land must still be covered by a building or within the curtilage of a building when the application is made.
- 2.4 The land was provisionally registered on 10 April 1968 and the registration became final on 22 March 1971 so conditions (a) and (b) are satisfied.
- 2.5 The plans attached to the Commons Register show that at the date of provisional registration in 1968, there was an access track, buildings and curtilage to the main house and buildings in the location where the access track, outbuildings and curtilage, tennis court and curtilage to the main house stand today. These are all annotated on Exhibit GD5. The Applicant's statutory declaration confirms these areas fell within the

Registered Land at the date of provisional registration. Condition (c) above is therefore satisfied.

- 2.6 In relation to condition (d), the 'Guidance to Commons Registration Authorities and the Planning Inspectorate' dated December 2014 published by DEFRA explains that for the purposes of paragraph 6, the buildings on the land at the date of the application do not need to be the same buildings as were in place at the date of provisional registration. However, if a building was demolished and replaced, there must have been no significant intervening period where the land was not covered by a building.

*Outbuildings and access track*

- 2.7 The Applicant's statutory declaration confirms that the outbuildings to the south of the main house were in a similar position to the current layout in 1988 when he bought the Property.
- 2.8 The plan attached to the statutory declaration of Ann Cecilia Rosa Smith at Exhibit GD6 is stated to be from a conveyance dated 1975. The plans attached to the statutory declarations of Ronald George Stride and Edward Frank Fulford at Exhibits GD10 and GD11 are not dated but the three plans show a number of buildings in situ, albeit in a different layout to the 1988/current layout, together with their curtilage and the access track leading to them and the main house. These statutory declarations were made with the intention of confirming the boundaries of the Property, how it was used and the right of way over the access track so do not mention how the buildings were used at the time, however the Applicant's statutory declaration states his understanding that the original buildings from 1968 in place when he bought the Property in 1988 were the timber hut and stable building.
- 2.9 The Applicant's declaration also explains the works he has undertaken to the outbuildings from 1988 to date. Although the barn (the building on the West side) was knocked down and replaced, it was replaced immediately and so there was no 'significant intervening period' where no building or the curtilage of a building was present. The timber hut bungalow (the building on the East side) has been renovated and extended to the South by about 3 metres but it is still situated in the same area as the building in 1968 and as shown on the plans referred to in paragraph 2.8. The buildings to the north which comprise of a stable building and workshop have remained in the same position from 1988 to date.
- 2.10 The Applicant has extended the curtilage to the outbuildings to the south by 3-4 metres. The Applicant has not undertaken any works to the access track leading to the main house and outbuildings.

*Garden to the main house*

- 2.11 In addition to the outbuildings and access track, some of the Southern part of the garden to the main house falls within the Registered Land and the Applicant confirms that to the best of his knowledge, this would have been the case dating back to the date of provisional registration.

*Historic sheds/garden to the main house*

- 2.12 The Applicant also explains that when he bought the Property, there were two large adjoining sheds in the area to the east of the old access track which led to the South East corner of the Property. The sheds cannot be seen on the 1968 map of the area but the 1969 and 1975 maps clearly show the sheds in situ. The Applicant states that when he bought the Property, the sheds were used for a wood workshop and for keeping animals and the area surrounding the sheds was used in connection with them as a yard for activities such as parking cars, storing wood and the keeping of animals.
- 2.13 In 1992, the Applicant demolished the sheds and built a tennis court in their place. The whole area has been used by the Applicant as part of the garden of the main dwelling.

## *Curtilage*

- 2.14 The term 'curtilage' is not defined in the Act but has been the subject of considerable case law over the years. It is generally interpreted to mean an area which is ancillary to the main building and which is used for the comfortable enjoyment of it. What classifies as curtilage will depend on the facts of each case but examples which have been taken as falling within the curtilage include a yard, basement area, passageway, driveway and garden which are ancillary to a dwelling house. Factors to be taken into account include the physical layout of the land and buildings, ownership and use and function.
- 2.15 The question to be considered is what area of common was covered by buildings and the curtilage of buildings at the date of provisional registration and has remained as such or covered by alternative buildings or curtilage up to the date of this application.
- 2.16 The historic plans referred to above all show an area delineated around the outbuildings. The statutory declaration of Edward Frank Fulford states that the access track to the buildings has been used since the Property was bought by George Stride in 1924. This evidences that, on the balance of probabilities, the curtilage of the outbuildings would have been used for the purpose of access to them in 1968.
- 2.17 The Applicant's statutory declaration explains that when he bought the Property in 1988, the courtyard between the buildings was already in place and that the buildings were surrounded by curtilage used for parking. In addition, he confirms that this curtilage has remained in use to the present day, and that the hard standing has been extended to the South side of the buildings to allow access to the courtyard from the South.
- 2.18 There is therefore clear evidence that the area surrounding the outbuildings has been used to access them from 1968 to date and forms part of their curtilage, along with the access track (which also forms part of the curtilage of the main house).
- 2.19 In addition, it is clear that the garden of the main house is included within its curtilage and the evidence shows that this has remained the same from 1968 to date. Turning to the historic sheds and their curtilage, it is submitted that the area edged orange on Exhibit GD5 was used as their curtilage dating back to 1968. The applicant has since purchased the Property and used the area as an extension to the garden to the main house and this is evidenced by the construction of the tennis court in 1992. This area has therefore either been covered by a building and its curtilage or has fallen within the curtilage of the main house from the date of provisional registration until the date of this application.
- 2.20 In the event that the view is taken that part of the Registered Land has not been covered by a building or its curtilage from 1968 to the date of this application and that paragraph 6 does not apply, then this application is, in the alternative, made under paragraph 7 in respect of the relevant area.

### **3 THE STATUTORY BASIS FOR AN APPLICATION TO DEREGISTER "OTHER LAND" WRONGLY REGISTERED AS COMMON LAND (SCHEDULE 2, PARAGRAPH 7 OF THE ACT)**

- 3.1 This application is made under paragraph 7 of Schedule 2 of the Commons Act 2006 in respect of the whole of the Registered Land (subject to the statement at paragraph 2.20 above).
- 3.2 Paragraph 7 states that *'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.'*
- 3.3 In order for paragraph 7 to apply, the following conditions must be satisfied:



- (a) the land must have been provisionally registered as common land between 2 January 1967 and 31 July 1970;
  - (b) the registration must have become final;
  - (c) the provisional registration of the land must not have been referred to a Commons Commissioner; and
  - (d) when the land was provisionally registered it must not have been:
    - (i) land subject to rights of common;
    - (ii) waste land of a manor;
    - (iii) a town or village green within the meaning of the Commons Registration Act 1965 as originally enacted; or
    - (iv) land of a description specified in section 11 of the Inclosure Act 1845.
- 3.4 The land was provisionally registered on 10 April 1968 and the registration became final on 22 March 1971 so conditions (a) and (b) are satisfied.
- 3.5 The 'Guidance to Commons Registration Authorities and the Planning Inspectorate' dated December 2014 published by DEFRA states that the requirement in (c) cannot be met in relation to any land contained in the Commons Register where there was an objection to the provisional registration which caused it to be referred to the Commissioner. As the Commons Register states that the registration was undisputed, condition (c) is also satisfied.

### **Rights of Common**

- 3.6 The Commons Register shows two entries in the rights section in relation to Whiteparish Common. Entry 1 in the rights section shows that the owners of Goldens Farm and the land edged red on the supplemental map have certain rights of common over Whiteparish Common. Entry 2 shows that the owners of Barters End and Cottage farm also have certain rights of common over Whiteparish Common. The applications to register the rights in entries 1 and 2 on the rights register were made on 8 October 1968 and 7 June 1968 respectively. Entry 1 was provisionally added to the register on 9 January 1969 and entry 2 was provisionally added on 31 March 1970. The entries did not become final until 1 August 1972.
- 3.7 Whiteparish common was provisionally registered as common land on 10 April 1968, before the rights came into existence. This is the case whether you look at the date of the applications, or the dates for provisional or final registration. This is clear evidence that there were no registered rights of common in existence before the date of provisional registration.
- 3.8 The statutory declaration of the Applicant also confirms that he is not aware of any other rights of common existing at the time of provisional registration, for example unregistered rights, and has not seen evidence of any being exercised in the time he has been in occupation of the property.
- 3.9 The statutory declarations of Ronald George Stride and Edward Frank Fulford confirm that at the date of provisional registration, the Registered Land was fenced off and occupied solely by the owners of Herrington House who had undisturbed possession and enjoyment of the Registered Land. This is further evidence that the land was not subject to rights of common.
- 3.10 The title documents to the Property also show that the Property is free from encumbrances apart from unknown restrictive covenants, and rights relating to the passage of electricity and water and rights of entry for the purpose of repairing pipes. It

is likely that if any rights of common existed, they would have been mentioned in these documents.

### Waste Land of a Manor

- 3.11 Waste land of the manor is not defined in statute but was defined in the case of *Attorney General v Hanmer* 1857 45 ER 80, in which Watson B stated "*the true meaning of wastes or waste lands or waste grounds of the manor, is the open, uncultivated and unoccupied lands parcel of the manor or open lands parcel of the manor other than the demesne lands of the manor.*" The Applicant has confirmed in his declaration that he is not aware of any evidence to suggest that the Registered Land previously belonged to a manor. In terms of the requirements for 'open', 'uncultivated' and 'unoccupied', there have been numerous Commissioners' decisions about the interpretation of these.

#### *Open*

- 3.12 In the context of commons, open is taken to mean unenclosed. This is noted in the leading practitioners text, *Gadsden on Commons and Greens*<sup>1</sup> and by the Chief Commons Commissioner in *In the Matter of Knacker's Hole Common, Puncknowle, Dorset (no.3) Reference 10/D/4*<sup>2</sup> who indicated that the erection of permanent fencing or another form of enclosure would deprive land of its status as manorial waste.

#### *Uncultivated*

- 3.13 In considering whether land is "uncultivated" in the required sense, Gadsden sets out that two factors are relevant:
- (a) the degree of cultivation that has occurred: land taken into arable cultivation or forestry is sufficient but the planting of a trees in an ad hoc fashion is not; and
  - (b) the purpose of the cultivation: importantly, it is stated that "an intention to maintain a site on a regular basis would seem to be sufficient to destroy the waste land status".
- 3.14 The Chief Commons Commissioner in *In the Matter of Chislehurst and St Paul's Cray Commons, Bromley, Greater London Reference 59/D/9-10* stated that "*in my view, uncultivated land is land which is left in its natural state, subject only to such restrictions on the growth of vegetation as necessarily follow from grazing and the exercise of other rights of removing the natural produce of the land.*" The land in that case had been brought in hand in a similar way to which land is brought in hand today by farmers who practice conservation farming through a combination of, for example, grazing, cutting, burning and spraying. Where these practices take place, the land should not be regarded as uncultivated as it has not been left in its natural state.

#### *Unoccupied*

- 3.15 When deciding applications under the 1965 Act, Commons Commissioners took the approach that the terms of land ownership and the actual use of the land should be considered in determining whether the land was unoccupied.
- 3.16 In the *Matter of Twn Barlwm Common, Risca and Rogerstone (1986) (Reference 273/D/106-107)*, the Chief Commons Commissioner stated, "*In my opinion, the fact that it has been let is a relevant consideration but is not conclusive. A tenancy merely gives a right to occupy. If a tenant never goes to the land he has taken it may well remain unoccupied. If he does make use of it the question whether the land is "occupied" is a question of fact. As Mr Harris correctly points out at least in this context the mere fact*

<sup>1</sup> Gadsden on Commons and Greens, 2<sup>nd</sup> Edition 2012, Edward F Cousins and Richard Honey, an excerpt is attached at Schedule 1.

<sup>2</sup> A copy of this decision and all other decisions referred to in this supporting statement are attached at Schedule 2.

that land is not fully fenced cannot be conclusive that it is unoccupied if all land that is "open" is "unoccupied" no meaning can be given to the word "open" in Watson B's definition".

#### *Demesne lands of the manor*

- 3.17 Demesne lands of the manor are lands that are in the hands of the lord, including those which are let out to tenants for years or from year to year. In *In the Matter of Waste Land, Caperby, North Yorkshire (1977) (Reference 268/D/96)*, the land was found to still be within the control of the Lord of the Manor as the land was let under a tenancy agreement by the Lord of the Manor himself. It didn't matter that the tenants made no use of the land, and it was therefore unoccupied, because by virtue of its inclusion in the tenancy it was demesne land of the Lord of the Manor.

#### *Evidence*

- 3.18 The statutory declarations of Ronald George Stride and Edward Frank Fulford show that the entirety of the Property including the Registered Land has been enclosed by a fence since 1925, which predates the date of provisional registration. They also make clear that the Property has been used by the owners and occupiers of Herrington House to the exclusion of all others since 1924. This is clear evidence that the land was not open or unoccupied in 1968 and did not therefore classify as waste land of a manor.
- 3.19 The Applicant's statutory declaration confirms that to the best of his knowledge the Registered Land has been used for grazing animals but apart from that has never been taken into arable cultivation. It is therefore arguable that the land is cultivated as per the interpretation taken *In the matter of Chislehurst and St Paul's Gray Commons* as the land has not been left in its natural state but has been grazed.
- 3.20 As the land was neither open nor unoccupied and was grazed in 1968 and all elements of the definition need to be satisfied, the land could not have classified as waste land of a manor at the date of provisional registration.

#### **Town or Village Green**

- 3.21 Section 22 of the Commons Registration Act 1965 defined a town or village green as being land allotted as such by an Act of Parliament, land on which the local people have a customary right to play sports or indulge in pastimes or land on which the local people have played sports or indulged in pastimes without challenge for not less than 20 years. A recent local search relating to the Property at Exhibit GD12 confirms that the Registered Land is not a registered town or village green.
- 3.22 In addition, the statutory declarations of Ronald George Stride and Edward Frank Fulford show that the Registered Land has been used solely by the owners and occupiers of Herrington House since 1924 and has been enclosed by a fence. The Applicant confirms that there is no evidence of any local residents using the Registered Land for sports and pastimes. This is clear evidence that the Registered Land was not a town or village green under the Commons Registration Act 1965 at the time of provisional registration.

#### **Land of a Description Specified in Section 11 of the Inclosure Act 1845**

- 3.23 Section 11 of the Inclosure Act 1845 includes the following:
- (a) all lands subject to any rights of common whatsoever, whether such rights might be exercised or enjoyed at all times, or might be exercised or enjoyed only during limited times, seasons or periods, or were subject to any suspension or restriction whatsoever in respect of the time of the enjoyment thereof;

- (b) all gated and stinted pastures in which the property of the soil or of some part thereof was in the owners of the cattlegates or other gates or stints, or any of them;
- (c) all gated and stinted pastures in which no part of the property of the soil was in the owners of the cattlegates or other gates or stints, or any of them;
- (d) 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 were or were not known by metes or bounds or otherwise distinguishable;
- (e) 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, was separated from the property of the soil; and
- (f) all lot meadows and other lands the occupation or enjoyment of the separate lots or parcels of which was subject to interchange among the respective owners in any known course of rotation or otherwise.

3.24 All of these categories involve land being occupied or used in common with others. As mentioned above, all the evidence in the statutory declarations shows that at the date of provisional registration, the Registered Land was fenced off and the owners and occupiers of Herrington House had exclusive and undisturbed possession of it. There is therefore no evidence that the Registered Land fell within the definition of section 11 of the Inclosure Act 1845. In addition, there is no reference to any such encumbrances in the title documents.

#### **4 CONCLUSION**

- 4.1 Paragraph 6 of Schedule 2 of the Act states that any land registered as common land to which paragraph 6 applies, is to be removed from the register of common land.
- 4.2 The evidence contained in the statutory declaration of the Applicant, together with the supporting documents shows that:
  - (a) the Registered Land was provisionally registered between 2 January 1967 and 31 July 1970;
  - (b) the registration became final;
  - (c) when it was provisionally registered, part of the Registered Land was covered by buildings or within the curtilage of buildings; and
  - (d) the land is still covered by buildings or within the curtilage of buildings at the date of this application.
- 4.3 This demonstrates that the area of the Registered Land covered by the buildings and their curtilage is land to which paragraph 6 applies. The Applicant has discharged the onus of proof for paragraph 6 and the land covered by the buildings and curtilage of buildings should therefore be removed from the register of common land.
- 4.4 In the event that the view is taken that paragraph 6 does not apply to the area of Registered Land covered by the buildings and their curtilage, then this application is, in the alternative, made under paragraph 7 in respect of that area. In either case, this application is made under paragraph 7 in respect of the remainder of the Registered Land. Paragraph 7 states that any land registered as common land to which it applies, is to be removed from the register of common land.

- 4.5 The evidence contained in the statutory declaration of the Applicant, together with the supporting Exhibits, shows that:
- (a) the Registered Land was provisionally registered as common land between 2 January 1967 and 31 July 1970;
  - (b) the registration became final;
  - (c) the provisional registration of the Registered Land was not referred to a Commons Commissioner; and
  - (d) when the Registered Land was provisionally registered it was not:
    - (i) land subject to rights of common;
    - (ii) waste land of a manor;
    - (iii) a town or village green within the meaning of the Commons Registration Act 1965 as originally enacted; or
    - (iv) land of a description specified in section 11 of the Inclosure Act 1845.
- 4.6 This demonstrates that the Registered Land is land to which paragraph 7 applies. The Applicant has discharged the onus of proof and met the relevant test and the Registered Land should therefore be removed from the register of common land.

**Burges Salmon LLP**

**3 November 2015**