

**WORCESTERSHIRE COUNTY COUNCIL  
COMMONS REGISTRATION ACT 1965**

**REPORT FOR DECISION BY HEAD OF LEGAL AND DEMOCRATIC SERVICES**

**APPLICATION FOR THE REMOVAL OF LAND FROM THE REGISTER OF COMMON  
LAND: LAND AT POWICK HAMS WORCESTER**

**Section 13 Commons Registration Act 1965  
The Commons Registration (General) Regulations 1966 and  
The Commons Registration (New Land) Regulations 1969**

**Documents attached:**

1. Application form with supporting documents
2. Plan showing the new proposed Sheet 42B showing the New Common Land and the Taken Land

**1. The Application**

- 1.1 An application under Section 13 Commons Registration Act 1965 was made on 20 September 2018 by the executive of Worcestershire County Council of County Hall Spetchley Road Worcester WR5 2NP.
- 1.2 The applicant claims the two areas of land in the Parish of Powick in the District of Malvern Hills, with a total area of 64,809 square metres comprising of 63,809 square meters of pasture land on the west of Malvern Road (A449) north of Powick Village (parts OS 3100 and 8800) as registered at HM Land Registry as title number HW135811, and 1,000 square metres of pasture land on the south of the River Teme and west of Powick Weir (parts OS 8800) as registered at HM Land Registry as title number WR77785, and which may be seen on the plan attached to the application coloured, hatched, and edged green and labelled E and F (the New Common Land) became common land by virtue of a compulsory purchase of land under the Acquisition of Land Act 1981, s.19 and paragraph 6 of schedule 3, the relevant instrument being the Hereford and Worcester County Council (Worcester Western Bypass) Compulsory Purchase Order, 1994 and the following notification of certification of such by the Secretary of State for the Environment dated 31 August 1995 and by virtue of the Transfer.
- 1.3 The applicant also claims that four areas of common land in the Parish of Powick in the District of Malvern Hills, forming part of Powick Hams (CL77) with a total area of 52,980 square metres, as registered at HM Land Registry as title number WR172606, and which may be seen on the plan attached to the application coloured, hatched, and edged violet and labelled A, B, C, and D (the Taken Land) ceased to be common land when the New Common Land became common land by virtue of the same instruments and by virtue of the Transfer of the Taken Land to Worcestershire County Council on 13 June 2003 (the Transfer)
- 1.4 The Taken Land was required to build the Worcester Western By-pass which was constructed following the Compulsory Purchase Order.
- 1.5 It appears that neither the owner of the New Common Land nor the applicant's predecessor authority (Hereford and Worcester County Council) nor Worcestershire

County Council as the successor authority made an application to amend the common registers following the date of the Transfer as required by the Commons Registration Act 1965 at the time in question.

- 1.6 The applicant wishes to apply for the Commons Registration Authority to make the necessary amendments to the commons register to reflect the Orders made in 1995 and the Transfer and the current physical use of the New Common Land and the Taken Land.

## **2 Background**

- 2.1 The applicant's predecessor made the Hereford and Worcester County Council (Worcester Western Bypass) Compulsory Purchase Order 1994 under the Highways Act 1980 which was certified under section 19 Acquisition of Land Act 1981 by the Secretary of State for the Environment on 31 August 1995.
- 2.2 The applicant acquired the Taken Land by virtue of the Compulsory Purchase Order and a transfer dated 13 June 2003 and built the Worcester Western Bypass.
- 2.3 One of the events by which land can become common land is by substitution or in exchange for other land which has ceased to be common land by virtue of an Act of Parliament.
- 2.4 The New Common Land became common land pursuant to the powers of the Secretary of State for Transport who confirmed the Hereford and Worcester County Council (Worcester Western Bypass) Compulsory Purchase Order 1994 (the Compulsory Purchase Order) on 14 August 1995 and issued the Certificate under s19 Acquisition of Land Act 1981 (the Certificate) on 31 August 1995.
- 2.5 The Taken Land ceased to be common land on the date of confirmation of the Compulsory Purchase Order.
- 2.6 No action was taken to ensure that the commons register and maps were updated.
- 2.7 The applicant wishes retrospectively to make the application to amend the register and map for Powick Hams CL77.

## **3. The Law**

- 3.1 Section 13 Commons Registration Act 1965 (the Act) authorises the making of Regulations for the amendment of the Commons Registers and the Commons Registration (General) Regulations 1966 (the General Regulations) and the Commons Registration (New Land) Regulations 1969 (the New Land Regulations) (together 'the Regulations') provide inter alia that:
  - 3.1.1 where, after 2nd January 1970, any land becomes common land or a town or village green, application may be made subject to and in accordance with the provisions of these Regulations for the inclusion of that land in the appropriate register and for the registration of rights of common thereover and of persons claiming to be owners thereof.; and
  - 3.1.2 an application for the registration of any land as common land or as a town or village green may be made by any person, and a registration authority



shall so register any land in any case where it registers rights over it under these Regulations.

3.1.3 An application must be—

- (a) in Form 29, 30, 31 or 32 as appropriate;
- (b) signed by or on behalf 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 unincorporate;
- (c) accompanied by such documents (if any) as may be requisite under regulation 4 below;
- (d) supported—
  - (i) by a statutory declaration as set out in the appropriate form of application, with such adaptations as the case may require, to be made by the applicant, or by one of the applicants if there is more than one, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, or charity trustees, by its or their solicitor or by the person who signed the application; and
  - (ii) by such further evidence, if any, as, at any time before finally disposing of the application, the registration authority may reasonably require

3.1.4 ...Where a registration authority accepts an application, it shall make the necessary registration.

**4. Process**

- 4.1 The application now falls to be determined by the Council as Commons Registration Authority under s 13 Commons Registration Act 1965 and the Regulations.
- 4.2 The application was served on all known commoners at the addresses appearing in the Commons register for CL77 and on all concerned authorities and on all persons who have informed the Council that they wish to be notified of any applications.
- 5.3 No representations have been made to the Council as Commons Registration Authority concerning the application.
- 5.4 The Council does not consider that the civil rights of any person will be affected by the acceptance of the application

**6. Grounds for Amending the Register**

- 6.1 The Taken Land forms part of the Worcester Western Bypass and was acquired by the Council under compulsory purchase powers contained in Sections 239, 240, 246, 248 and 250 of the Highways Act 1980.
- 6.2 The New Common land was provided in exchange as required by the Certificate

6.3 The Register of Common Land needs to be amended to reflect the provisions of the Compulsory purchase Order

7. **Conclusion**

7.1 The requirements of the Commons Registration Act 1965 and the Regulations have been satisfied

7.2 The Compulsory Purchase Order was confirmed.

7.3 The Worcester Western Bypass was built.

7.4 The New Common Land was transferred to the previous owner of the Taken Land in exchange

8. **Recommendation**

I recommend that the application is granted



Fiona Morgan  
Principal Conveyancer

5 November 2018

I agree/ ~~do not agree~~ the recommendation made in the report above.

  
5/11/18

S Mallinson  
Head of Legal & Democratic Services