

Commons Act 2006

Report under Delegated Authority

Application details	Application made under Section 13 of the Commons Act 2006 to surrender common rights of part of CL166 from the Register of Common Land. Land at Windfallwood Common in Lurgashall Parish known (Register Unit No. CL166).
Investigating officer	Gemma Penfold
Investigating officers recommendation	That the application made under Section 13 of the Commons Act 2006 to surrender common rights from the Register of Common Land relating to part of the land at Windfallwood Common in Lurgashall Parish (Register unit No. CL166) be approved and the common rights on the part of the application land shown on the application plan be removed from the register.

1. Background

- 1.1 Under the provisions of the Commons Act 2006 ("the Act") the County Council is a Commons Registration Authority ("CRA") and so responsible for maintaining the Registers of Common Land and Town and Village Greens for West Sussex.
- 1.2 Section 13 of the Act in part sets out that: -
 - (1) The surrender to any extent of a right of common which is registered in a register of common land or town or village greens—
 - (a) only has effect if it complies with such requirements as to form and content as regulations may provide; and
 - (b) does not operate at law until, on an application under this section, the right is removed from the register.
 - (2) The reference in subsection (1) to a surrender of a right of common does not include a disposition having the effect referred to in section 7(1)(a).
 - (3) A right of common which is registered in a register of common land or town or village greens cannot be extinguished by operation of common law.

And

Schedule 4 Paragraph 7 of the Commons Registration (England) Regulations 2014 ("The Regulations") sets out that:

- (1) An application under section 13 of the 2006 Act may only be made by—
 - (a) the owner of the land to which the right of common is attached or, in the case of a right of common in gross, the owner of that right; or
 - (b) the owner of the land or of any part of the land over which the right of common is exercisable.
- (2) Where the applicant is the owner of the land (or of any part of the land) over which the right of common is exercisable, the application must show that the following persons consent to it—
 - (a) the owner of the land to which that right is attached or, as the case may be, the owner of the right of common in gross.
 - (b) any relevant leaseholder of the land to which that right is attached.
 - (c) any person having the benefit of a relevant charge over the land to which that right is attached.
- (3) The application must include—
 - (a) evidence of the applicant's capacity to make the application by virtue of sub-paragraph (1)(a) or (b);
 - (b) the numbers of the register unit and the rights section entry in the register of common land or town or village greens for the right of common to which the application relates; and
 - (c) except where the right of common is held in gross, a description of the land to which the right of common is attached.
- (4) Where it relates to only part of a right of common which is attached to land, the application must—
 - (a) identify that part of the land to which it is attached; and
 - (b) be accompanied by an application made for the purposes of section 8 of the 2006 Act.

- 1.3 The CRA needs to be satisfied that evidence of ownership of the land that the rights are attached to or ownership of the common land that the rights are exercisable over have been submitted and any relevant consents have been obtained.

2. Application

- 2.1 The application was submitted on behalf of Sybs Farm Limited of Sybs Farm, Windfallwood Common, Haslemere, GU27 3BX ("the Applicant") on the 14th September 2023. The Application was accepted as being duly made on 20th September 2023.

- 2.2 A plan of the Application Land is appended to this report at Appendix 1 ("the application plan") and additional supporting documentation is held in Appendix 2.

2.3 Application Land and Rights Timeline

(According to documentation held by the CRA and submitted by the applicant)

14th June 1968: The piece of land called Windfallwood Common in the parish of Lurgashall distinguished by the number of this register unit CL166 is registered pursuant to application No. 304 made on 7th May 1968.

29th June 1968: At the time of the first creation of the Register of Common Land under the 1965 Registration Act, David John Hern of Sybs Farm registered the right of common to cut and take small trees, to cut and take gorse and furze bushes and underwood, to cut and take bracken, to take leafmould over the whole of the land comprised in this register unit.

25th November 1992: Registration amendment to part of the land comprised in the register unit shown edged red and lettered R1 is removed from the Register of Common Land pursuant to a decision of a Common Commissioner made on the 9th October 1992 under The Common Land (Rectification of Registers) Act 1989.

16th April 1993: Registration amendment to part of the land comprised in the register unit shown edged red and lettered R2 is removed from the Register of Common Land pursuant to a decision of a Common Commissioner made on the 8th February 1993 under The Common Land (Rectification of Registers) Act 1989.

3. Handling of the application

- 3.1 In accordance with Regulation 21 of the Regulations, the Application was publicised by issuing a notice on the County Council's website, placing notices on site, and serving notices on relevant persons. The notices were served on 22nd September 2023 and posted on site on 27th September 2023.
- 3.2 During the period for representations, objections were received from the following:

3.2.1 Anna Swiderska

An objection was received by Anna Swiderska on the basis that this application proposes to remove the rights of way relating to this land. They raised concerns relating to safety and the interest of the public to have these rights of ways. The CRA clarified that this application is not in relation to public rights of way. It was explained that the application was made by Sybs Farm who are applying to surrender their common rights and that the land will not be removed from the commons

register, only the rights will be removed. In addition, we set out that this application does not affect the public rights of way at this location. Anna Swiderska confirmed withdrawal of the objection as it does not affect the public right of way.

3.2.2 David Walker

David Walker explained that they purchased their property on Windfallwood Common in July 1986. They subsequently found out an individual called Jerry Schooler had purchased their rights to the common and incidentally a number of properties on the common. They have always wanted to have their rights to the common land and would be interested in purchasing or having the rights returned to them or in taking ownership of their rights. The CRA consulted records and found no reference to any rights other than those applied for by David John Hern of Sybs Farm. It was explained that a right of common can be created by an express deed. David Walker confirmed the objection was withdrawn.

3.2.3 The South Downs National Park Authority (SDNPA)

The SDNPA has an interest as access authority, given that all registered Common Land is designated as access land. The SDNPA raised an enquiry on whether these are the only rights registered over this parcel of land and if so, would the land be removed from the Commons Register. The CRA confirmed that these are the only rights registered over this land. However, the land will not be removed from the common register, only the rights will be removed. No further comments were raised by the SDNPA.

4. Application of the Law to the facts

- 4.1 In order to amend the register, the registration authority must be satisfied the application meets the requirements of Schedule 4, Paragraph 7 of the Regulations.
- 4.2 Part A Section 1 of the application identified Sybs Farm Limited (The Applicant) as the Owner of the land to which the right of common is attached, evidenced by the HM Land Registry Official Copy of Register of Title for WSX415259 issued on the 12th February 2024. Therefore, the Applicants have evidenced their capacity to apply to have the rights surrendered under Schedule 4, Paragraph 7(1)(a) and Schedule 4, Paragraph 7(3)(a) of the Regulations.
- 4.3 Part A Section 4 and 5 of the application has correctly identified the register unit and right entry concerned and gives a description of the land

that the rights are attached to as required by Schedule 4, Paragraph 7(3) of the Regulations.

- 4.4 Objections from David Walker and Anna Swiderska have both been withdrawn.

Representation from the SDNPA is not an objection to the application. The application is valid and no valid objection remains.

5. Conclusion

- 5.1 It is the Officer's conclusion that on the balance of probabilities, and for the reasons set out above in this report, the legal tests set out in Section 13 of the Act and Schedule 4, Paragraph 7 of The Regulations has been met by the Application and that consequently it should be approved.
- 5.2 The common rights set out in Part A Section 4 of the Application should be removed from part of the register unit of CL166, as shown in red on the application plan (Appendix 1).

Report sign off

Consultation with local member date: 20th February 2024

Consultation with Committee Chairman date: 12th February 2024

Report cleared and signed off by Senior Solicitor

Sign: [REDACTED] **Print:** LAURA FLOODGATE

Date: 26-2-2024

