

## Record of operational decision

<b>Decision title:</b>	Decision to de-register part of the land that forms part of CL54 Welsh Newton Common.
<b>Date of decision:</b>	7 <sup>th</sup> February 2020
<b>Decision maker:</b>	Acting Assistant Director for Technical Services
<b>Authority for delegated decision:</b>	<p>Operational decision under ECC Scheme of Delegation</p> <p>Herefordshire Council's constitution - Scheme of Delegation Part 3 Functions Scheme, Section 7 Officer Functions</p> <ol style="list-style-type: none"> <li>1. 3.7.6 Delegation to Chief Executive</li> <li>2. 3.7.13 Sub delegation from Chief Exec to officers</li> </ol> <p>Appendix 1 Chief Executive's Scheme of Delegation to Officers – Specific sub-delegation to Director for Economies Communities &amp; Corporate, the economy and place directorate's scheme of delegation dated 1<sup>st</sup> April 2019 (line 48)</p>
<b>Ward:</b>	Llangarron
<b>Consultation:</b>	<p>The application has been advertised as required by Regulation 21 of the Commons Registration (England) Regulations 2014 and notice was served in accordance with Schedule 7 of the Regulations.</p> <p>Two representations were received. One was not made in accordance with Rule 25 of the 2014 regulations and must therefore be ignored.</p> <p>The ward member has also been informed of this decision.</p>
<b>Decision made:</b>	To deregister the strip of land at Newton Lodge at Welsh Newton Common, outline in red on the attached plan, as the application complies with the requirements of Paragraph 7, Schedule 2 of the Commons Act 2006.
<b>Reasons for decision:</b>	<p>The application has been determined by written evidence and submissions and a visit to the land on the 14<sup>th</sup> January 2020, made by the Commons Registration Officer.</p> <p>The initial application was made on the 1<sup>st</sup> December 2015 and subsequently amended on the 5<sup>th</sup> February 2018 and re-advertised in accordance with the 2014 regulations. The application form indicates that it has been made in accordance with provisions of paragraph 7, Schedule 2 of the Commons Act 2006, which provides that an application can be made where:</p> <ul style="list-style-type: none"> <li>(a)the land was provisionally registered as common land under section 4 of the 1965 Act;</li> <li>(b)the provisional registration of the land as common land was not referred to a Commons Commissioner under section 5 of the 1965 Act;</li> <li>(c)the provisional registration became final; and</li> <li>(d)immediately before its provisional registration the land was not any of the following—</li> </ul>

- (i) land subject to rights of common;
  - (ii) waste land of a manor;
  - (iii) a town or village green within the meaning of the 1965 Act as originally enacted; or
  - (iv) land of a description specified in section 11 of the Inclosure Act 1845
- It is not disputed that the application was properly made.

It is not disputed that CL54 Welsh Newton Common was provisionally registered as common land on the 23<sup>rd</sup> August 1967 and that registration became final on the 1<sup>st</sup> October 1970. The provisional registration of the land was not referred to the Commons Commissioner.

Whether immediately before the provisional registration, the land was subject to the rights of common:

The rights section of the register show that there are a number of properties that have recorded registered rights across the common. The applicant has provided evidence, in the form of a statutory declaration that the 1910 Finance Act field register and working plan indicates that the track was not coloured white, which infers that the land was not subject to the public or indications that it was common land. There was also no deduction made for the land at Newton Lodge, which is what you would expect if the land was subject to rights of common. The objector raises a valid point that a deduction was not claimed that does not necessarily indicate that the right did not exist. The council did ask the objector for further information regarding this point and did not receive a response.

The statutory declaration submitted makes reference to the fact that gates were installed to define the boundary of the common, this has been identified on the plans submitted. The objector raises the fact that the gates did not affect the exercise of rights of common and if commons wished to graze beyond the gates then they were entitled to do so. A right of grazing held in common entitles the commoner to graze over a defined parcel of land, subject only to the rights of all commoners similarly entitled. With this background, the council enquired further of the objector as to why they would think that a gate would not define a boundary and the council did not receive a response.

The applicant has submitted a copy of sale particulars dated 1895 that shows that the track is clearly defined within the parcel of land owned by newton lodge, by a boundary. Having undertaken a site visit, the track has a substantial stone wall either side of it and is a hard standing and would not have been capable of being grazed.

The application to register Welsh Newton common under the 1965 act was made by the clerk to the parish meeting on 16<sup>th</sup> August 1967. There was an earlier application on 6<sup>th</sup> June 1967 by a Fred Saar. The plan on the earlier application did not include the parcels which the applicant now seeks to deregister. The later application was accepted, however which did include the parcels and although there is some correspondence from Mr Saar in the file asking why this happened, he did not formally object to the application in accordance with the regulations at the time.

	<p>The council therefore deducts that on the balance of probabilities the land was not subject to the rights of common.</p> <p>The land was not waste land of the manor:</p> <p>The statutory declaration submitted does state that the particulars of sale of 1895, referred to above, describe Newton Lodge as a residence with outbuildings and a farm attached and a cottage with a garden. The inference from this is that Newton Lodge and its land is not part of the waste land of the manor, nor was it a town or village green or within the 1845 act.</p> <p>The copy of the sales particulars also shows the track with a defined parcel of land. It was used to access the area where the stables and coach house were. The track was used as an entrance and exit point for the coach and horses. Later in time it was used as a storage area for farm implements.</p> <p>At the site visit the Commons Registration office was shown an old aerial photograph (undated) depicting the track and the area used as an entrance and storage of farm implements. This evidence does align with the evidence submitted in the statutory declaration.</p> <p>The council therefore deducts that the on the balance of probabilities the land was not waste land of the common.</p> <p>The land was a town or village green or land of a description specified in section 11 of the Inclosure Act 1845:</p> <p>The above evidence also depicts that on the balance of probabilities the land was neither of the above.</p> <p>To conclude the application satisfies the criteria identified in paragraph 7 of Schedule 2.</p>
<b>Highlight any associated risks/finance/legal/equality considerations:</b>	<p><b>Financial</b> There is a statutory obligation of the council in line with the Commons Act 2006 and this decision does not put any financial constraint on the council. If this decision is challenged than there may be a financial risk to the council.</p> <p><b>Legal</b> The council has employed specialist solicitors to inspect the application and evidence provided and advise accordingly. This decision aligns with the assessment.</p> <p><b>Equality</b> There are no equality risks associated with this decision.</p>
<b>Details of any alternative options considered and rejected:</b>	To not deregister the land. This decision could be challenged and is against the legal advice that has been received.
<b>Details of any declarations</b>	None.

**of interest made:**

Signed..... Date: 7<sup>th</sup> February 2020