

**COMMONS ACT 2006: SECTION 19 - CORRECTION TO COMMONS REGISTERS  
CL 156, CL 161 AND CL 187, APPLICATION BY MR EDMUNDS**

**Report of the County Solicitor**

*Please note that the following recommendation is subject to consideration and determination by the Committee before taking effect.*

**Recommendation: It is recommended that field O.S. No.49 be included in the commons register.**

**1. Summary**

Devon County Council (excluding Torbay and Plymouth) is the Commons Registration Authority (CRA) for Devon.

On 1 October 2008 the 1965 Act was repealed in Devon, as Devon County Council became a pioneering authority for DEFRA to test Part 1 of the Commons Act 2006 (2006 Act).

The Council received an application from Mr W J Edmunds under Section 19 of the 2006 Act to correct the mistake in the commons register of the omission of field O.S. No.49.

Section 19 (2) of the 2006 Act allows an applicant to make an application to correct a mistake in the commons register made by the CRA.

**2. Background**

Mr Edmunds claims that Devon County Council did not correctly create his entry in the commons registers CL 156, CL 161 and CL 187 when the registers were established between 1967 and 1970.

During this period owners of common land and the CRA were able to provisionally register land as common land under the 1965 Act. These rights of common were usually created by prescription and if not registered with the CRA before the closing date they would be lost.

When completing his application to create a right of common, Mr Edmunds submitted an application for the registration of a right of common (CR Form 9) for land in his ownership. The application included O.S. No. 49.. It appears that the omission of O.S. No. 49 from the Register was not noticed at the time.

Mr Edmunds application to rectify the register under Section 19 of the 2006 Act was received on the 19<sup>th</sup> August 2009. A copy of the notice for this application was placed on the Councils website and sent to the local authorities for the area of concerned.

The Council received two objections to this application, , and responses to those objections were made by the applicant.

The objections can be summarised as:-

- The inclusion of field OS No 49 would create a new right of common which was not previously registered or allowed by the Commons Commissioners.
- The fact that a field which does not benefit from the right of common is situated adjacent to land which does have the benefit of a right of common does not suggest there has been a mistake in failing to register rights over that field.
- Mr Edmunds does not own the land or provided evidence of his right to make an application.
- The Commons Act 2006 does not permit the creation of new rights of common or the severance of existing rights of common.

Mr Edmunds has provided a response to the comments submitted by the objectors:-

- Field OS No 49 was included in the original application and hence there is no creation of a new right of common
- He does not own part of the field and provided evidence that he has the authority of the other part owner.

### **3. Conclusion**

On the application form received from Mr Edmunds dated 24 June 1968 to register a right of common it clearly states that a right of common is attached to field O.S. No.49. As this has not been transferred to the commons register, this is a mistake the CRA have made and should be corrected.

This would not create a new right of common or increase the number of rights on the common, it would correct a mistake that the CRA made in 1968.

Field O.S. No.49 should be entered into the commons register as having a right of common.

### **4. Financial Considerations**

There are no implications.

### **5. Sustainability Considerations**

The inclusion of OS No. 49 in the Commons Register would not create a new right of common or increase the number of rights on the common; it would correct a mistake that the CRA made in 1968.

### **6. Carbon Impact Considerations**

There are no implications

### **7. Equality Considerations**

There are no implications

### **8. Legal Considerations**

The implications/consequences of the recommendation have been taken into account in the preparing of the report.

### **9. Risk Management Considerations**

There are no implications.

## **10. Reasons for Recommendation/Alternate Options Considered**

The application form received from Mr Edmunds dated 24 June 1968 to register a right of common clearly stated that a right of common attached to field O.S. No.49. The CRA mistakenly did not transfer this right the commons register. As the omission of OS No.49 is due to a mistake of the CRA, field O.S. No.49 should be entered into the Commons Register as having a right of common it should be corrected.

**Jan Shadbolt**

ELECTORAL DIVISION: SOUTH BRENT & DARTINGTON

Local Government Act 1972: List of Background Papers

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Background Paper Date File  
Aug 2009 to date Ref.CA0048  
Form CA10  
S19(2) Application