



# Proposal Decision

By Richard Holland

Appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 14 November 2013

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**Proposal Ref: COM 511**

**St. Breward Common, Cornwall**

Register Unit: CL 197

Registration Authority: Cornwall Council

- The proposal is made by Cornwall Council ('the council') under Section 19(2)(a) of the Commons Act 2006 ('the 2006 Act') to correct a mistake made by the Commons Registration Authority (CRA) in making or amending an entry in the register.
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## Decision

1. The proposal is granted and the parcels of land shown coloured green and numbered 1 to 9 on the plan attached to this decision shall be removed from the register of common land.

## Preliminary Matters

2. This proposal has been determined on the basis of written evidence only.

## Main Issues

3. The proposal has been made in accordance with the provisions of section 19(2)(a) of the 2006 Act which provides that a CRA may amend its register of common land to correct a mistake made by the CRA in making or amending an entry in the register. Section 19(4)(a) permits a CRA to make amendments on its own initiative. The main issue is whether a mistake was made by the CRA in making an entry in the register and whether the correction of the register would be unfair on anyone.
4. The onus of proving the case in support of the correction of the register of common land rests with the body making the proposal, and the burden of proof is the normal, civil standard, namely, the balance of probabilities.

## The Proposal

5. The proposal is to remove from the register nine parcels of land ('the proposal land') totalling approximately 1.7485 hectares from register unit number CL 197 St. Breward Common which adjoins common land register unit number CL 124.
6. The council explains that an application dated 12 May 1967 was submitted by John William Hext in respect of an application for the registration of a right of common which resulted in the provisional registration of land as common land under register unit number CL 124. At the time of registration the land was drawn with a thick green pen on the application map which resulted in gaps between the green edging and the black lines on the ordnance survey Map. The council further explains that the CRA in compiling its maps drew most of its green lines adjacent to the boundary of the ordnance surveys black lines at a scale of 1:10,560 on Map sheet 125.

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7. Following a Commons Commissioners Decision (206/D/211-227 dated 20<sup>th</sup> January 1977) register unit number CL 124 became final with modifications. The rights application dated 12 May 1967 became void. The land was consequently registered following an application made by the Cornwall Commoners Association dated 27 October 1967. The map accompanying the application by the Cornwall Commoners Association was drawn with a much neater hand, being mainly adjacent to the boundary of the ordnance survey black lines, than the map accompanying application 0036. It is the council's case that the CRA included farm land or fields the other side of the ordnance survey black lines in order to compensate for the lack of gaps as shown on the original application map 0036. The council confirms that there are no applications which support the inclusion of the proposal land as common land, most of which are dominant tenements (land to which rights attach) and seeks to have the land removed.

## Reasons

### ***Whether a mistake was made by the registration authority such that the register should be corrected***

8. The land section of the commons register for register unit number CL 197 refers to a number of small parcels of land additional to the tract of land known as St. Breward Common and Rough Tor Downs and also part of an area known as Hamatethy Common registered pursuant to application number 0095A made on 27<sup>th</sup> October 1967 by the Cornwall Commoners Association. The council advise that the original application to register adjoining register unit CL 124 was made by John William Hext (0036). The accompanying application map being hand drawn in green includes a number of gaps between the green edging and the ordnance survey black lines. The provisional register map drawn by the CRA is again hand drawn in green but with the lines being adjacent to the boundary of the ordnance survey black lines. The provisional register map includes the proposal land. The map accompanying the application made by the Cornwall Commoners Association (0095A) is also drawn adjacent to the boundary of the ordnance survey black lines.
9. The council considers that the reason the proposal land was included in the registration was to compensate for the lack of gaps shown in the original application map 0036. While I agree that this is a feasible explanation based on the mapping evidence provided there is no documentary evidence to confirm that this was the case. However, I accept the council's case that there are no applications, including application 0036 and 0095A, which support the inclusion of the proposal land. I further note that the majority of the application land is included within dominant tenements (land to which rights attach). I accept that, while it is not clear why the proposal land was registered as common by the CRA, the submitted maps are sufficiently clear to show that mistakes were made in drawing and that the proposal land should not have been registered.

### ***Whether any party places or has placed reliance upon the register such that the correction of the entry would, in all the circumstances, be unfair***

10. The landowners and the commoners of St. Breward Common support the proposal as does the Chairman of the Hamatethy Commoners Association as he considers that the parcels are in bye and should not have been registered. No representations objecting to the proposal have been received and I therefore conclude that it would not be unfair on any party to remove the nine parcels of land from register unit number CL 197.

## Conclusion

11. I conclude that the parcels of land subject of this proposal were included in the register of common land by mistake and that they should therefore be removed.

**Richard Holland**

