Report on an application to deregister land at Oak Tree Farm, Hilton Green, Hilton

1 Purpose

1.1 To provide a recommendation to the officer with delegated authority on an application to delete a section of land registered as common land in Hilton, Cambridgeshire.

2 Introduction

2.1 Cambridgeshire County Council (‘CCC’) is the Commons Registration Authority (‘CRA’) for the purposes of the Commons Registration Act 1965 (‘the 1965 Act’) and the Commons Act 2006 (‘the 2006 Act’).

2.2 Schedule 2 paragraph 6 of the 2006 Act provides a mechanism for any person to apply to deregister land as common land where certain criteria are met. CCC determines applications for registration purely upon their legal merits and the factual basis of the supporting evidence and any evidence submitted by the objectors. Under CCC’s scheme of authorisation for determining applications under the 2006 Act, the Assistant Director of Highways will make a determination on unopposed applications (Appendix A). Where applications are opposed the Assistant Director of Highways may, where necessary, engage counsel to advise the authority. If it is deemed necessary a non-statutory public inquiry may be held where evidence both for and against deregistration of the Application Land will be heard before an independent Inspector, usually a barrister specialising in this area of law. Following the conclusion of the inquiry, the Inspector’s report would form the basis of the determination report made by the case officer as to whether or not the application should be granted.

3 Background

3.1 On 8th February 1968 land known as Hilton Green in the parish of Hilton, was provisionally registered as common land under the provisions of the 1965 Act pursuant to application No. 14 made by the clerk to Hilton Parish Council (map of common land attached at Appendix C). The registration of the land known as Hilton Green was declared final by the Commons Commissioner on 2nd February 1976 following a series of hearings to determine the application.
On 19 March 2019 an application was made by Richard Dyke-Price of Oak Tree Farm, Hilton (‘the Applicant’) to the CRA under schedule 2 paragraph 6 of the 2006 Act to deregister land at The Green, Hilton (Commons Registration reference H/CL 4) as it was claimed that the land had been wrongly registered because it formed part of the curtilage of a building (Appendix B).

On 3 April 2019 the CRA returned the application to the applicant requesting that the dates which the application relied upon were specified in section 5 of the application. The application was returned by the applicant on 3 April 2019 fully completed. The accompanying fee was subsequently received by the CRA on 25 April 2019 and the CRA wrote to the applicant on 3 May 2019 informing them that the application was now duly made.

The application was advertised on site and interested parties notified in accordance with section 21 of the Commons Registration (England) Regulations 2014 (‘the 2014 Regulations’) on 16 May 2019 (Appendix D). The closing date for the submission of representations was 27 June 2019.

Five representations, including one objection from Steve Byrne (‘the Objector’), were received by the CRA during the advertising period. These are discussed in greater detail in section 8 of the report below. These are attached at Appendices E - I. Copies of the representations were sent to the Applicant in accordance with section 25 of the 2014 Regulations on 28 June 2019.

On 16 July 2019 the CRA received the Applicant’s response to the representations (Appendix J). Following receipt of the Applicant’s comments the CRA decided to provide the Objector with a further opportunity to make written representations under section 27(4)(c) of the 2014 Regulations. The CRA wrote to the Objector, attaching the Applicant’s response, on 17 July 2019 (Appendix K). The letter stated that the investigating officer of the CRA was minded to recommend to the officer with delegated authority that the application be granted in full and the land deregistered. The letter invited the Objector to provide further comment on issues concerning Ordnance Survey mapping conventions (discussed in greater detail at section 8).

On 17 July 2019 the Objector responded to the CRA’s letter stating ‘I see no reason to change anything in my original e-mail. As noted there, I am not in a position to comment further’ (Appendix L).

4 Site Description

The Application Land is a linear strip of land to the east of Oak Tree Farm, approximately 52 metres in length with a width of 1 metre at its southern end, widening to 1.5 metres at its northern end (‘the Application Land’). The Applicant’s plan of the Application Land can be seen cross-hatched at Appendix M. The CRA’s plan of the Application Land can be seen coloured in blue at Appendix N.
4.2 The Application Land comprises: an area of flower beds in front of the main dwelling and outbuildings at Oak Tree Farm; flower beds under the eaves of the thatched roof of the main dwelling; the porch of the main dwelling and flower beds under the eaves of an outbuilding. Photographs of the Application Land can be seen at Appendix O taken on 16 May 2019.

5 Legal Framework

5.1 The 1965 Act first introduced a system of registration of Common Land and Town and Village Greens in England and Wales. This was intended to establish a definitive register of all Common Land and Town or Village Greens in England and Wales. The 2006 Act provides a replacement system to the 1965 Act. To date, the 2006 Act is only fully in force across nine Commons Registration Authorities in England and Wales, referred to as the Pilot Authorities. CCC is still considered to be a ‘1965 Registration Authority’ and as such only limited sections of the 2006 Act apply to Cambridgeshire, until such time as Part 1 of the 2006 Act is fully brought into force. The limited sections of the 2006 Act which apply to CCC include schedule 2 parts paragraphs 6 and 8 which concern buildings, or land within the curtilage of a building, registered as a Town or Village Green or Common land.

5.2 Schedule 2 paragraph 6 of the Commons Act 2006 provides a mechanism for the deregistration of land which is covered by a building or the curtilage of a building as set out below:

6(1) If a commons registration authority is satisfied that any land registered as common land is land to which this paragraph applies, the authority shall, subject to this paragraph, remove that land from its register of common land.

(2) This paragraph applies where-

(a) the land was provisionally registered as common land under section 4 of the 1965 Act;

(b) on the date of the provisional registration the land was covered by a building or was within the curtilage of a building;

(c) the provisional registration became final; and

(d) since the date of the provisional registration the land has at all times been, and still is, covered by a building or within the curtilage of a building.

(3) A commons registration authority may only remove land under sub-paragraph (1) acting on-
(a) the application of any person made before such date as regulations may specify; or

(b) a proposal made and published by the authority before such date as regulations may specify.

6 The evidence in support of the application

6.1 The Applicant submitted evidence with their application to support the case for deregistration of the land. This included the Statutory Declaration of Richard Dyke-Price which can be viewed at Appendix P and includes the following documents:

<table>
<thead>
<tr>
<th>RDPP1</th>
<th>A plan showing the location of Oak Tree Farm, The Green, Hilton.</th>
</tr>
</thead>
<tbody>
<tr>
<td>RDPP2</td>
<td>Extract of online map showing extent of registered common land in the area around Oak Tree Farm.</td>
</tr>
<tr>
<td>RDPP3</td>
<td>Plan showing extent of Oak Tree Farm claimed to be registered incorrectly as common land.</td>
</tr>
<tr>
<td>RDPP4</td>
<td>Ordnance Survey plan 1886 depicting Oak Tree Farm as a public house</td>
</tr>
<tr>
<td>RDPP5</td>
<td>Extracts from an epitome of title for Oak Tree Farm dated 30 June 1977 including reference to a grant of land between Arthur White Robinson and J G White-Robinson in 1949 and a conveyance dated 1 August 1962.</td>
</tr>
<tr>
<td>RDPP6</td>
<td>A photograph of Oak Tree Farm believed by the applicant to have been taken in the 1930s.</td>
</tr>
<tr>
<td>RDPP7</td>
<td>Extract of a book called Hilton showing a painting of Oak Tree Farm from 1941.</td>
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<tr>
<td>RDPP8</td>
<td>Two photographs from mid-1950s of Oak Tree Farm.</td>
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<tr>
<td>RDPP9</td>
<td>Two photographs from mid-1960s of Oak Tree Farm.</td>
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<tr>
<td>RDPP10</td>
<td>Extract of a conveyance dated 30 June 1977 transferring Oak Tree Farm from Anne Cowan to Richard Dyke-Price and Diana Dyke-Price.</td>
</tr>
<tr>
<td>RDPP11</td>
<td>Three photographs of Oak Tree Farm taken mid-1980s, 1990s and 2000s.</td>
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<tr>
<td>RDPP12</td>
<td>Photograph of Oak Tree Farm taken 2018.</td>
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</tbody>
</table>

6.2 Additionally the Applicant submitted signed letters of two long-time residents of Hilton who had both lived in the village for 70-plus years and had personal knowledge of Oak Tree Farm and the Application Land (Appendix Q).

6.3 Finally the Applicant submitted six decisions made by the Commons Commissioner on 12 November 1975 all concerning Hilton Green (H/CL4) (Appendix R). The decisions all concern the confirmation of the application to provisionally register land at Hilton Green as common land. The hearings were held by the Commons Commissioner to determine the conflicting provisional
registrations of Hilton Green as common land, under reference CL. 4, and Town or Village Green, under reference VG. 56.

7 Analysis of Evidence

7.1 This report considers the Application Land in relation to the legislative tests set out in section 5 of this report. They have been broken down into the following headings to assist in the consideration of whether each element of the tests has been met in this case:

1. The land was provisionally registered as common land under section 4 of the 1965 Act
2. The provisional registration became final
3. On the date of the provisional registration, and at all times since, the land was covered by a building or was within the curtilage of a building

The Land was provisionally registered as common land under section 4 of the 1965 Act

7.2 An extract of the register for common land in the former county of Huntingdon and Peterborough concerning registration unit CL. 4 is attached at Appendix S. Page 1 of the extract confirms that the date of provisional registration of CL. 4 (Hilton Green) was 8 February 1968 pursuant to application No. 14 made by the Clerk of Hilton Parish Council. This describes the land provisionally registered as follows:

‘The piece of land known as Hilton Green containing 26.9 acres or thereabouts in the parish of Hilton, in the county of Huntingdon and Peterborough, as marked with a green verge line inside the boundary on sheet 160 of the register map and distinguished by the number of this register unit. Registered pursuant to application No. 14 made by the Clerk to Hilton Parish Council.’

7.3 Page 15 of the extract (Appendix S) is the map contained within the registration unit referred to above. The map contained within the register is formed of a 1:2500 scale Ordnance Survey map, believed to be the 1977 edition, with a green line drawn over the top of the base map features. Oak Tree Farm is depicted adjacent to the Hall (which was not registered as common land) with three buildings abutting a thick green verge line representing the extent of registered common land. The map is marked as ‘redrawn to a 1:2500 scale’ and stamped 18 September 1984. This is because CCC became the CRA for the former county of Huntingdon and Peterborough following the Local Government Act of 1974. On 18 September 1984 CCC replaced the original commons maps in the register with maps drawn at a greater scale for ‘easier identification of boundaries’. The map produced in 1984 would have been produced to the standard outlined in The Commons Registration (Objections and Maps) Regulations 1968 at section
9(5) which provided the following guidance on how the boundary of common land was to be depicted:

‘(…). A coloured verge to be placed inside a boundary shall be placed with its outer edge touching the boundary’.

7.4 Prior to the redrawing of the registration maps in 1984 by CCC, the original registration map produced by Huntingdon and Peterborough County Council was drawn onto an Ordnance Survey base map at a scale of 1:10560 or 6 inches to 1 mile with an inset plan of Hilton. The inset plan is without a marked scale although the base map appears to be the Ordnance Survey 1926 edition 25 inches to 1 mile. This is contained at Appendix T. It is not known the exact date when the map was produced. This depicts the Application Land with a green felt tip line which appears to be through the front of the buildings at Oak Tree Farm. This map may have been produced with the benefit of The Commons Registration (General) Regulations 1966. Section 16(5)(b) of the regulations stated that common land should be shown ‘by black lines verged green inside the boundary’.

7.5 Case Officer Comment: It is considered that the extract of registration unit CL. 4 and the original registration map provides evidence that the Application Land was provisionally registered as common land under section 4 of the 1965 Act on 8 February 1968.

The provisional registration became final

7.5 The extract of the register for common land concerning registration unit CL. 4 referred to above, was updated on 9th February 1976 stating the following:

“The registration at entry no. 4 above was declared final by the Commons Commissioner on 2nd February 1976.” (Appendix S).

7.6 The Applicant submitted with his application six decisions made by the Commons Commissioner on 12th November 1975 (Appendix R). These provide an insight into the considerations of the Commons Commissioner when they declared the registration of Hilton Green final, including the Application Land, in 1976.

7.7 Case Officer Comments: It is considered that the extract of registration unit CL. 4 provides evidence that the Application Land’s provisional registration as part of unit CL. 4 became final by decision of the Commons Commissioner on 2 February 1976.

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1 Available online at http://www.legislation.gov.uk/uksi/1968/989/regulation/9/made
On the date of the provisional registration, and at all times since, the land was covered by a building or was within the curtilage of a building

7.8 The Applicant provided evidence in his statutory declaration for the period from the 1930s until 2018 concerning the make-up of the Application Land during this period (Appendix P). The evidence is discussed below.

Extracts from an epitome of title for Oak Tree Farm dated 30 June 1977 - RDDP5

7.9 The Applicant makes reference to use of the word ‘messe’ in the epitome of title provided which states, in reference to a grant of land from 1949, ‘All that messe or dwelling house then formerly used as a Public House and known by the name or sign of “The Red Cow” site at Hilton’. The applicant considers that the word ‘messe’ is an abbreviation of ‘messuage’ which was a word that was once used as a catch-all for a dwelling house and, among other things, its curtilage. There is a plan attached to the 1962 conveyance between James Graham White-Robinson and Anne Cowan from 1 August 1962 (page 19 – Appendix P). The Applicant states that the plan shows the land being conveyed including an area of land to the front of the dwelling house that is consistent with the Application Land.

Photograph believed to be from mid 1930s of Oak Tree Farm – RDDP6

7.10 The Applicant provided a photograph which they believe was taken in the 1930s. The porch and the eaves of the main dwelling house and outbuilding are visible to the front of Oak Tree Farm. Additionally an additional front entrance to the main dwelling is visible to the left of the building opening out onto the Application Land.

Extract of a book called Hilton showing a painting of Oak Tree Farm from 1941 – RDDP 7

7.11 The Applicant provided an extract of a book called Hilton by Jack Dady. The extract contains a painting from 1941 by Edmund Walker of the front of Oak Tree Farm. The porch, eaves and flower beds are visible to the front of Oak Tree Farm.

Two photographs from mid-1950s of Oak Tree Farm – RDDP 8

7.12 The Applicant provided two black and white photographs of the front of Oak Tree Farm which the Applicant states were taken in the mid-1950s. The two photographs provide a close-up view of the front of Oak Tree Farm and the Application Land. Flower beds, the eaves and the porch are all clearly visible in the photographs. The soil pipe of Oak Tree farm is also visible extending into the Application Land at the front of the property. The grass and vegetation which is in front of the Application Land has the appearance of unkempt common land for grazing.
Two photographs from mid-1960s of Oak Tree Farm – RDDP 9

7.13 The Applicant provided two black and white photographs of the front of Oak Tree Farm which were taken in the mid-1960s. This would have been around the time of provisional registration of the Application Land in February 1968. The photographs show the eaves, flower beds, porch and soil pipe all remaining on the Application Land at the front of Oak Tree Farm. The second entrance noted on the 1930s photograph has now disappeared. There are two large stone ornaments either side of the porch on the Application Land. The grass on the common land to the front of the Application Land now has the appearance of being kept neater than the photograph from 1950s. The grass appears to be more in the style of a green than grazed common land.

Extract of a conveyance dated 30 June 1977 transferring Oak Tree Farm from Anne Cowan to Richard Dyke-Price and Diana Dyke-Price – RDDP 10

7.14 The Applicant provided an extract from a conveyance transferring the ownership of Oak Tree Farm from Anne Cowan to Richard Dyke-Price and Diana Dyke-Price on 30 June 1977. The extract contains an extract of an Ordnance Survey Map from 1926 with the boundary of Oak Tree Farm edged in red. The extract of the deed also states ‘together with the messuage or dwellinghouse and outbuildings erected thereon or on some part thereof and known as Oak Tree Farm The Green Hilton’.

Three photographs of Oak Tree Farm taken mid-1980s, 1990s and 2000s – RDDP 11

7.15 The Applicant provided colour photographs during his period of ownership in the mid-1980s, and 1990s through to 2000s. The photographs show some changes which took place to Oak Tree Farm during this period including the restoration of the wood faced garage adjoining the outbuilding, and the replacement of shrubs and flowers within the Application Land. The photographs show the eaves, flower beds and the porch being maintained in the same position within the Application Land during this period.

Photograph of Oak Tree Farm taken 2018 – RDDP 12

7.16 The Applicant provided a colour photograph of Oak Tree Farm including the Application Land taken in 2018. The photograph shows the eaves, flower beds, hedges and porch within the Application Land to the front of Oak Tree Farm in the year that the application was made.

Letter of Mrs Norma Furniss – 13 December 2018 – Appendix Q

7.17 The Applicant provided a signed and addressed letter from Mrs Norma Furniss who lived in Hilton for 70 years after moving to the village in 1948. Mrs Furniss states that she has known Oak Tree Farm the whole time she lived in Hilton and was a frequent visitor to the property in the 1950s where she used to pick fruit.
Mrs Furniss confirmed in her letter that the frontage of Oak Tree Farm remains the same today (2018) as it did when she first moved to Hilton. She stated that there has always been a brick and wood front porch, with a tiled roof flanked either side by a flower bed in front of the house and cottage, and a gravel path in front of the beds.

**Letter of Mrs Doreen Britten – 19 December 2018 – Appendix Q**

7.18 The Applicant provided a signed and addressed letter from Mrs Doreen Britten who lived in Hilton for over 70 years before moving to Earith in early 2018. Mrs Britten has first-hand knowledge of Oak Tree Farm as her husband was born in Oak Tree Farm and Mrs Britten worked in Oak Tree Farm for nearly 30 years from 1979. Mrs Britten states that in the 70 plus years she has known the house, it has always had a front porch with flower beds either side, and a hedgerow beyond. Furthermore Mrs Britten states that the frontage of Oak Tree Farm remains the same as when she arrived in Hilton after the war save for a few improvements such as the re-thatching of the small cottage and rebuilding of the wooden garage attached.

7.19 **Case Officer Comment:** In order to reach a conclusion on this point, it is necessary to first consider what is meant by the term ‘curtilage’ and whether ‘curtilage’ can form part of more than one building for the purposes of schedule 2 paragraph 8 of the 2006 Act.

7.20 The Application Land is made up of a porch, approximately 1 metre wide; the land under the eaves of the roof of the main dwelling and outbuilding of Oak Tree Farm; and flower beds and shrubs abutting the buildings. The Application Land therefore concerns the curtilage of two buildings.

7.21 Guidance is given by the Department of the Environment, Food, and Rural Affairs (‘DEFRA’) on whether curtilage can form part of two or more buildings under schedule 2 paragraphs 6 and 8 of the 2006 Act. DEFRA’s online guidance entitled Commons registration authorities: correct mistakes provides the following guidance:

> “the land has been at all times, and still is, covered by a building or belongs to a building – though it doesn’t have to be the same building or even a building that was legally built.”

Further guidance on the matter is provided by DEFRA in their June 2013 document *Part 1 of the Commons Act 2006 – Guidance to Applicant in the pioneer implementation areas (Appendix U).* Section 9.3.4 of the document states that in DEFRA’s view:

> “it is not necessary that the land has remained unchanged during that time [from provisional registration to date], merely that the criterion has been satisfied

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2 [https://www.gov.uk/guidance/commons-registration-authorities-correct-mistakes](https://www.gov.uk/guidance/commons-registration-authorities-correct-mistakes)
throughout. For example, if the land was covered by a barn in 1965, was registered as common land in 1968, but the barn was demolished and the land incorporated into the garden of an adjoining house in 1984 (and remains so today), then the criterion is likely to be satisfied.”

It is therefore considered that the fact that the claimed curtilage, which forms part of the Application Land, is connected to two buildings should not be considered to be problematic to the application.

7.22 Notwithstanding the above, the term ‘curtilage’ is not defined in the 2006 Act and therefore has been subject to some debate. The Application Land, in part, concerns land which the Applicant claims to be within the ‘curtilage’ of Oak Tree Farm. Oak Tree Cottage, the main dwelling of Oak Tree Farm, is a grade II listed building by Historic England (listed on 4 November 1982). Guidance on the term ‘curtilage’ in the context of a schedule 2 paragraph 8 of the 2006 Act (on an application to deregister land as town or village green in Burrough Green, Cambridgeshire) is in given by Alan Evans of Kings Chambers in written advice dated 14 June 2019 (pp.26 – 30 - Appendix V). More specifically Alan Evans identifies the case of Attorney-General ex rel Sutcliffe v Calderdale Borough Council [1982]⁴ (‘Calderdale’) as providing guidance on an approach to the meaning of the word ‘curtilage’ in this particular context. This identified three factors which need to be taken into account when considering what forms part of the curtilage of a listed building. These were:

i. The physical layout of the, in that case, listed building and the structure;
ii. Their ownership, past and present;
iii. Their use or function, past and present.

The physical layout of the building and the structure

7.23 The Application Land was provisionally registered as common land on 8 February 1968 with the registration being made final on 2nd February 1976. It is therefore pertinent to consider the available evidence covering the period from 1968 to the date of the application in 2018.

7.24 Chronologically, the nearest Ordnance Survey map provided, which pre-dates provisional registration, is the Ordnance Survey 25 inch to 1 mile 1926 edition at RDDP 10 in Appendix P and used on the inset plan of the original registration map at Appendix T. The nearest in date Ordnance Survey map available post-dating final registration is the 1: 2500 1977 edition used by CCC on the replacement registration map at page 15 of Appendix S. The most recent Ordnance Survey Master Map can be viewed at Appendix Z.

7.25 The Ordnance Survey maps provide evidence of changes to the buildings at Oak Tree Farm during the period from 1926 to 2019. The frontage of the main

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³ https://historicengland.org.uk/listing/the-list/list-entry/1128441
⁴ Attorney General ex rel Sutcliffe v Calderdale Borough Council [1982] 46 P & CR 399
dwellings appears to have remained the same throughout the period with extensions and alterations to the rear of the building evident during this period. The frontage of outbuilding to the north east of the main dwelling has again broadly remained the same during the period with some alterations to the rear evident between 1926 and 2019. The 1977 map depicts a further building to the north east fronting onto the Application Land which has been removed by 2019. The Applicant stated to the investigating officer on an accompanied site visit in May 2019 that this was an Anderson Shelter, which was removed some time after their ownership of the property from June 1977. There is some evidence of changes to buildings to the rear of the main dwelling during this period. Due to the scale at which the maps were surveyed, there are limitations to the evidence that can be drawn from the maps in relation to the Application Land which comprises of an area 1 to 1.5 metres wide. These limitations are discussed in greater detail in paragraphs 8.12 – 8.14 below.

7.26 The photographs from the mid-1960s, 1980s, 1990s, 2000s and 2018 are considered to be of greater value in establishing the physical layout of the frontage of Oak Tree Farm during the period from 1968 to 2019. These all show that there was a front porch in existence on the Application Land during this period. Furthermore it is evident from the photographs provided that the Application Land was covered by a combination of flower beds, shrubs, was under the eaves of the main dwelling and outbuilding, and by a soil pipe, in addition to the front porch.

7.27 Additionally the signed letters of two long-term residents of Hilton provide further clarification on the physical layout and structure of Oak Tree Farm and the Application Land. These both provide evidence that the frontage of Oak Tree Farm was made up of a porch, flower beds, hedgerows and land under the eaves of the buildings.

Their ownership, past and present

7.28 Appendix S supplied by the Applicant provides evidence of the ownership of Oak Tree Farm during the period covering 1962 to 2018 in the form of an extract of a conveyance dated 1 August 1962 between James Graham White-Robinson and Anne Cowan and of a conveyance dated 30 June 1977 between Anne Cowan and Richard Dyke-Price and Diana Dyke-Price. Both conveyances provide reference to the term ‘the messuage’ together with the dwelling house and the outbuildings. Additionally both conveyances provide title plans drawn onto a 1926 edition 25 Inch to 1 Mile Ordnance Survey base map. The title plans show that the area of land considered to be part of Oak Tree Farm decreased significantly between 1962 and 1977 presumably as sections of the farm were sold off for development. The area of ownership to the front of the main dwelling and outbuildings however remains consistent in both conveyances.

7.29 It is considered that the conveyances, when considered in conjunction with the photographs, painting and witness statements, provide evidence that the
frontage of Oak Tree Farm, including the Application Land, was consistently regarded as being within the ownership of Oak Tree Farm.

Their use or function, past and present

7.30 It is considered that the photographs from the 1930s to 2018, in addition to the witness letters and painting of 1941, provide evidence of the function of the Application Land prior to provisional registration in 1968 and up to 2018. The photographs and painting consistently show that the Application Land was, and continues to be, partly an entrance to the main dwelling and to the rear of the property, through a porch at the front and a wooden gate to the side of the main dwelling. Additionally it shows that the Application Land was, and continues to be, partly an amenity area immediately to the front of Oak Tree Farm maintained as flower beds, shrubs and hedges sitting, in part, directly below the eaves of the thatched roofs of the main dwelling and outbuilding.

8 Representations and Objections received during the advertising period

8.1 Five representations were received during the consultation period between May and June 2019 (Appendices E to I).

8.2 One representation was received from the Applicant stating that the two photographs contained in exhibit ‘RDPR9’ of his statutory declaration show that in the 1960s the front of the flower bed of the house was delineated by a hard border of bricks laid at an angle on each other (Appendix E).

8.3 An objection was received from Steve Byrne on 4 June 2019 (Appendix F). The objection was provided with an extract of the register for Hilton Green and four Ordnance Survey maps at a scale of 25 inches to 1 mile or 1: 2500 from 1888, 1901-02, 1926 and 1977. The Objector stated that they could not see any discrepancy with the Ordnance Survey mapping and felt that there was no need to question the accuracy of the mapping. They stated that it was much more probable that there was originally a trespass beyond the boundaries of old parcel 50 that was ignored at the time or never subsequently challenged.

8.4 Huntingdonshire District Council submitted responses from Development Services (Appendix G) and the Landscape Officer (Appendix H). Development Services stated that they had no comments to make, the Landscape Officer stated that he had no objection to the application.

8.5 The Open Spaces Society initially responded to the application on 13 June 2019 stating that they accepted that the land covered by the eaves of the house, the porch, and the planted bed immediately in front of the house are curtilage and
have been since the date of provisional registration in 1968 and therefore are eligible for deregistration. The Open Spaces Society however initially objected to how the land was depicted on CRA’s notice plan (Appendix I). The CRA responded on 19 June 2019 with a re-produced plan and confirmed that the land applied to be deregistered was approximately 1 to 1.5 metres wide. The Open Spaces Society responded to this stating that they were content with the re-produced plan and that they do not wish to pursue the objection.

8.6 The Applicant was sent the representations on 1 July 2019 and provided with 21 days to respond. The Applicant’s response on 15 July 2019 contained a critical assessment of the Ordnance Survey maps based on their own first-hand experience (Appendix J). The Applicant stated that they believed that the plan, which is contained within the 1962 and 1977 conveyances at RDDP5 and RDDP5 10 of the statutory declaration, provides a more accurate depiction of Oak Tree Farm than the 1977 Ordnance Survey map provided by the Objector. Furthermore the Applicant stated that a greater weight should be given to their evidence as it is based on research undertaken by persons with first-hand knowledge of the property including two letters of support from long term residents of Hilton.

8.7 On 17 July 2019 the CRA wrote to the Objector to provide them with a further opportunity to make representations in light of the Applicant’s latest comments (Appendix K). The CRA included with the letter quotations on conventions of Ordnance Survey mapping at a scale of 1:2500 or 25.344 inches to 1 mile taken from J B Harvey Ordnance Survey Maps – a descriptive manual [1975] and Richard Oliver Ordnance Survey Maps – a concise guide for historians [1993]. The Objector was given until 2 August 2019 to comment on the points raised within the letter.

8.8 On 17 July 2019 the Objector responded to the letter stating that they had read the comments of the Applicant and the letter of the CRA and could see no reason to change anything in their original representation of 4 June 2019 (Appendix L).

8.9 Case Officer Comment: The Objector focusses on the consistent nature of how the land at and surrounding Oak Tree Farm is depicted by the Ordnance Survey from 1888 to 1977 (Appendix F). For the purposes of this application, it needs to be established what existed on the ground at the time of provisional registration on 8th February 1968, final registration on 2nd February 1976, and what is on the ground today. The Ordnance Survey maps provided by the Objector from 1888 and 1901 are therefore irrelevant to the determination of the application as it does not matter what was in existence on the ground prior to 8th February 1968. The 1926 County Series and 1977 National Grid series Ordnance Survey maps provided are therefore considered to be of general relevance to this application because they cover the period from 8th February 1968 to 1977.
8.10 It is considered that the eastern boundary of Oak Tree Farm is shown by a straight single continuous line abutting the common land on the extract of Ordnance Survey map of 1977. This is consistent with the original registration map provided. The boundary of Oak Tree Farm shown on the 1926 extract is also depicted by a generally straight single continuous line boundary line except for a slight kink in the line between the main dwelling in the south and the outbuilding to the north.

8.11 The area which has been applied to be deregistered is 1 metre wide in the south, extending to 1.5 metres at its northern tip. The Application Land is formed of flower beds, a porch (approximately 1 metre wide), and land underneath the eaves of the thatched roof of the main dwelling and the eaves of an outbuilding.

8.12 According to J B Harley in *Ordnance Survey Maps – a descriptive manual* [1975] Ordnance Survey has a minimum threshold for surveying features in the landscape surveyed at a scale of 1: 2500 or 25.344 inches to 1 mile (Appendix W). For features such as bay windows, porches and roof projections this was a minimum of 4 square metres or with the shortest side of the feature measuring at least 2 metres. Additionally ‘sloping masonry’ had a threshold of 4 metres between top and base at a scale of 1: 2500 or 25.344 inches to 1 mile (p. 54).

8.13 According to Richard Oliver in *Ordnance Survey Maps – a concise guide for historians* [1993] after 1893 flowerbeds were not shown on Ordnance Survey maps apart from in ‘large public gardens’ and ‘show country houses such as Chatsworth or Eaton Hall’ (Appendix X). Further, ‘small rockeries, small slopes, shrubberies, seats and private statues… hen houses, pigsties, kennels &c… and temporary erections of no great solidity’ and footpaths were not mapped (p.57).

8.14 It is therefore considered that the boundary of Oak Tree Farm, shown as a generally straight single continuous line by the Ordnance Survey on maps in 1926 and 1977, was most likely depicting the front of the buildings, fences and the boundary wall. Features such as the porch, the flower beds and the eaves of the roofs were most likely not depicted as they were considered to be too small to survey at a scale of 1:2500 (or 25.344 inches to 1 mile) based on the Ordnance Survey conventions discussed above. It is considered likely that the CRA followed the continuous boundary line shown on the Ordnance Survey base map when depicting the boundary of the common land at Hilton by green verge line on provisional and final registration. It is therefore considered that the area of the Application Land was, most likely, inadvertently registered as common land by the CRA.
Comments – determination of Schedule 2 paragraph 6 and 8
Applications under the 2006 Act

9.1 The matter of whether or not the Application Land should be deregistered will be decided on the evidence submitted by both sides and will not be dependent on the support or objection.

9.2 Section 27 of The Commons Registration (England) Regulations 2014 states the factors which a CRA should take into account when determining an application under the 2006 Act.

9.3 Paragraph 7 of section 27 of the 2014 Regulations stipulates that it is open to a CRA to grant an application, without first offering oral representations or a public inquiry, in circumstances where the decision would not represent a determination of a person’s civil rights. The CRA must act reasonably and fairly in accordance with a general public law principle and the principles established in the case of (R (Whitney) v Commons Commissioners [2004] where at paragraph 29, Arden LJ stated:

“In order to act reasonably, the registration authority must bear in mind that its decision carries legal consequences.” (Appendix Y).

9.4 The application received one objection during the advertising period. The Objector confirmed in their objection that they have no legal interest in the Application Land (Appendix F). It is considered that a decision to grant the application would not represent a determination of the Objector’s civil rights. This is because the Objector has confirmed that they have no legal interest in the Application Land and so it is not considered necessary to offer any opportunities to make oral representations in this case. The CRA instead, on 17 July 2019, provided the Objector with a further opportunity to make written representations in accordance with paragraph 4 of section 27 of the 2014 Regulations. The Objector declined the opportunity to make further written representations on 17 July 2019.

Conclusion

10.1 It is considered that the evidence outlined above demonstrates that, on the balance of probabilities, the Application Land formed part of the curtilage of Oak Tree Farm at the time of provisional registration in February 1968 and continues to do so at the time of the writing of this report in August 2019. The application is therefore considered to meet the tests included in schedule 2 paragraph 6 on the 2006 Act namely:

a) the land was provisionally registered as common land under section 4 of the 1965 Act on 8th February 1968;
b) on the date of the provisional registration, 8th February 1968, the land was covered by a building or was within the curtilage of a building;

c) the provisional registration became final by decision of the Commons Commissioner on 2nd February 1976; and

d) since the date of the provisional registration, 8th February 1968, the land on has at all times been, and still is, covered by a building or within the curtilage of a building.

11 Recommendation

11.1 It is recommended that the application is granted in full to deregister land at Oak Tree Farm and the Application Land is deleted from registration unit H/CL4 of the Register of Commons for Cambridgeshire under schedule 2 paragraph 6 of the 2006 Act.

Appendix

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