

Mrs. Attwood
The Cottage
Little Frieth
Frieth
HENLEY-ON-THAMES
RG9 6NR

Date: 24th October 2016
Ref: JC

Dear Mrs. Attwood,

Common Land adjacent The Cottage, Little Frieth - Registration No CL217

You may recall I visited the footpath and common land on your property on 3rd June 2016 with Andrew Clark, a member of the Buckinghamshire Local Access Forum (LAF). The LAF is an independent, statutory advisory body on all matters relating to countryside access, including common land and open access land, with members representing a wide range of interests. It was set up following the Countryside & Rights of Way Act 2000.

The site visit with Andrew Clark followed complaints from local residents to Hambleden Parish Council regarding the fencing on common land CL217 adjacent and to the rear of The Cottage; the parish subsequently raising these matters with the county council. We spoke briefly about the subject and I offered to write to you following advice provided to the county council by the LAF at their meeting on 20th July 2016. This is summarised below. I have also tried to lay out the history and the council's intentions regarding the common land in light of this advice and copied in Hambleden parish council and the Open Spaces Society for their information.

In 1969 Hambleden parish council wrote to the county council to outline the land they considered to be common land. This was presented to the Commons Registration Sub-Committee in the same year and they agreed to register it as common land. I have copied the register entry and plan for your information, together with a plan we hold on our electronic mapping, interpreted from this commons map. You will note there are no commoner's rights registered on the land. Following the sub-committee meeting the maps were returned to the parish and we assume they are still held by that council.

Also in our records we hold a Commons Commissioner's decision letter dated 5th July 1978 (Ref No 203/U/122), but this relates to ownership rather than the status of the common. I have enclosed a copy for information. The Commissioner found that, before the conveyance, the land was used in common by the occupants of the neighbouring houses and none of the land was used as a private garden. You mentioned a High Court judgement and I have found reference the county council were notified of the date the court was to 'be moved' (see attached reference 1979 C No 3316), but I do not have a copy of the final judgement. Subsequent correspondence suggests a Mr Cogswell won the case, with costs charged to the parish council, but reference is only made to awarding ownership title to Mr Cogswell. I have no evidence suggesting this High Court judgement reversed the status of common land made by the Commons Commissioner.

When we spoke on 3rd June 2016 I mentioned new legislation (part 1, Commons Act 2006) was now in force in Buckinghamshire that allowed owners to deregister areas of common land if it is believed the land was incorrectly registered; applications can be made to Buckinghamshire County Council either under section 19(2)(a) or paragraphs 6-9 Schedule 2 Commons Act 2006. There is a non-refundable fee to make an application of £1,445 (plus additional fees dependent upon case progression and you can find more information on the county council's website: <http://www.buckscc.gov.uk/environment/rights-of-way/mapping-the-network/common-land-and-town-or-village-greens/> . However, having consulted the documents held by the county council, there appears to be no evidence to suggest the common was incorrectly registered. When we met in June you stated you believed the common was registered without the owner's consent. However, at the time the land was registered in 1969 there was no owner. If you wish the land to be deregistered it is up to you to prove it has been incorrectly recorded, but ownership of the land, in itself, does not render common land designation as void.

You may also be aware, that the Countryside & Rights of Way Act 2000 designated common land as 'open access' land. However, Schedule 1 of the same Act identified 'excepted land' over which no public access would be allowed, including (in para 2) within 20 metres of a dwelling and 'land used as a garden'. I have drawn red circles denoting 20 metres from the property that illustrate that most of the land is excepted under Schedule 1. Use as a garden seems to be the current use, though this wasn't the case when the land was registered as common in 1969. I am satisfied that at least most of the land has no public access and all of the land has no commoner's rights.

Section 38(3) Commons Act 2006 specifies that fencing on common land needs consent from the Secretary of State, Department of Food & Rural Affairs. I understand you have stated the fencing is temporary, but that is not relevant. Further information on how to apply for consent is available on the Gov.uk website.

The footpath running down the south-eastern side of your property is Footpath 15 Hambleton Parish (HAM/15/1). The footpath passes over the common land from a wooden gate at the adopted highway boundary to a stile at the southern boundary. Wycombe District Council made a stopping-up Order under section 257 Town & Country Planning Act 1990 in 2004, enclosed for information, to reduce the width over a short section. The remainder of the path has no recorded width in the definitive statement. I understand the width was stopped-up in order to construct an extension which was never built, but it appears the land is now used for car parking. The gate at roadside is relatively new and with no consent under section 147 Highways Act 1980, remains unlawful.

Considering the above information, both the fence line sectioning off the common land and the gate at roadside are unlawful, without the necessary consent. The LAF's considered advice is that, while the fencing on the common is, in principle, unlawful, in light of current resources the county council should take no further action in this case. However, a note will be added to the Land Charges Register so that prospective purchasers of the property are aware of the issues when a local property search is undertaken.

Finally, you mentioned a letter you had written to Margaret Freeman, to which you had not received a reply. I have found a copy of that letter and attach it for information.

Yours sincerely,

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Strategic Access Officer

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cc.

Hambleton Parish Council

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