

**North Yorkshire County Council**

**Business and Environmental Services**

**Planning and Regulatory Functions Sub Committee**

**14 February 2023**

**Application to surrender a registered right of common and application for removal of the right from the register of common land.**

**Commons Act 2006 Part 1 – Section 13**

**The Commons Registration (England) Regulations 2014  
Schedule 4 Paragraph 7**

**Application Reference Number CA7 007**

**Right entry 12 exercisable over Land in the Manor of Spaunton (CL162)**

**Report of the Corporate Director - Business and Environmental Services**

**1.0 Purpose of Report**

- 1.1 To report on an application (“the Application”) seeking to amend the register of Common Land to reflect the surrender of a registered right of common and removal of the registered right from the register of common land.

**2.0 Background**

- 2.1 Under the provisions of the Commons Act 2006 (“the Act”) the County Council is a Commons Regulation Authority (“CRA”) and so responsible for maintaining the Registers of Common Land and Town and Village Greens for North Yorkshire.
- 2.2 Part 1 of the Commons Act 2006 took full effect in North Yorkshire from 15 December 2014 and at the same time it became effective in Cumbria. The provisions of the Act are applied through the Commons Registration (England) Regulations 2014.
- 2.3 Section 13 of the Act in part sets out that: -
- (1) *The surrender to any extent of a right of common which is registered in a register of common land or town or village greens—*
    - (a) *only has effect if it complies with such requirements as to form and content as regulations may provide; and*
    - (b) *does not operate at law until, on an application under this section, the right is removed from the register.*
  - (2) *The reference in subsection (1) to a surrender of a right of common does not include a disposition having the effect referred to in section 7(1)(a).*
  - (3) *A right of common which is registered in a register of common land or town or village greens cannot be extinguished by operation of common law.*

And

Schedule 4 paragraph 7 of the Commons Registration (England) Regulations 2014 (“The Regulations”) sets out that:

- 7. - (1)** *An application under section 13 of the 2006 Act may only be made by—*
- (a) *the owner of the land to which the right of common is attached or, in the case of a right of common in gross, the owner of that right; or*
  - (b) *the owner of the land or of any part of the land over which the right of common is exercisable.*

- (2) *Where the applicant is the owner of the land (or of any part of the land) over which the right of common is exercisable, the application must show that the following persons consent to it—*
  - (a) *the owner of the land to which that right is attached or, as the case may be, the owner of the right of common in gross.*
  - (b) *any relevant leaseholder of the land to which that right is attached.*
  - (c) *any person having the benefit of a relevant charge over the land to which that right is attached.*
- (3) *The application must include—*
  - (a) *evidence of the applicant's capacity to make the application by virtue of sub-paragraph (1)(a) or (b);*
  - (b) *the numbers of the register unit and the rights section entry in the register of common land or town or village greens for the right of common to which the application relates; and*
  - (c) *except where the right of common is held in gross, a description of the land to which the right of common is attached.*
- (4) *Where it relates to only part of a right of common which is attached to land, the application must—*
  - (a) *identify that part of the land to which it is attached; and*
  - (b) *be accompanied by an application made for the purposes of section 8 of the 2006 Act.*

2.4 A CRA needs to be satisfied that evidence of ownership of the land that the rights are attached to or ownership of the common land that the rights are exercisable over have been submitted and any relevant consents have been obtained.

### 3.0 Application

3.1 The application was submitted by Daniel Johnathan Mann and Helen Louise Saunders ("the Applicant"). The Application was dated the 6 April 2022 and received by the County Council on 12 April 2022. The Application was accepted as being duly made on 22 April 2022.

3.2 A copy of the Application comprises **Appendix 1**, and additional supporting documentation is held in **Appendix 2**.

### 3.3 Application Land and Rights Timeline

(according to documentation held by the CRA and submitted by the applicant)

**28 May 1968:** At the time of the first creation of the Register of Common Land under the 1965 Registration Act, Rose Farrow registered the right to graze 16 sheep over the Manor of Spaunton. These rights were registered as attached to the property Rose Cottage as shown on the supplemental map referred to in column 4 of the register entry number 12. Rose Farrow registered these rights in her capacity as tenant of Rose Cottage **Appendix 3**. The owner of Rose Cottage at the time was Zillah Hamilton.

**11 April 2001:** Jane Redgate registers ownership of Rose Cottage with the Land Registry. Title Number NYK249252. **Appendix 2**.

**6 April 2022:** Daniel Johnathan Mann and Helen Louise Saunders (the Applicants) purchase Rose Cottage **Appendix 1**.

## 4.0 Representations

- 4.1 Under Regulation 21 of the Regulations, the CRA publicised the Application by issuing a notice on the County Council's website and by serving notices on all relevant parties. The notices were posted on 25 April 2022, in accordance with Regulation 21(5)(a) of the Regulations.
- 4.2 There was one representation received in response to the notice, from Jonathan Allison Chairman of The Spaunton Protection Association who objected to the application **Appendix 4**.
- 4.3 Mr Allison objected on the grounds that The Act established that common rights cannot be alienated from the land or sold away.
- 4.4 The Applicant did not wish to make a formal comment on the objection but they did pass the objection on to the representative of the owner of the common land who stated that they did not agree with the objection as surrender of common rights was permitted under The Act **Appendix 5**.
- 4.5 Mr Allison was emailed regarding his statement that The Act prevented this type of application and was invited to expand on his objection, in particular to clarify which part of The Act would prohibit a common right from being surrendered. Mr Allison restated that he believed that The Act did not allow for the alienation of rights from the land. A further email was sent explaining the difference between a Section 9 and a Section 13 application and Mr Allison was invited to withdraw his representation objecting to the application. However, no response has been received from Mr Allison **Appendix 6**. Under the Officers Delegation Scheme, part of the County Council's Constitution any applications with unresolved objections shall be referred by the Corporate Director of Business and Environmental Services to the Planning and Regulatory Functions Sub-Committee for determination.

## 5.0 Assessment – have the relevant tests been met?

- 5.1 Officers comments on the statutory provisions are set out below –
- 5.2 Section 13 of the Act requires the application to meet the requirements set out in paragraph 7 of the Regulations:

Section 1 of Part A of the application form identifies Daniel Johnathan Mann and Helen Louise Saunders (the Applicants) as the surrendering right holders, evidenced by the HM Land Registry TR1 form dated 6 April 2022 (**see Appendix 1**). Although the Land Registry Plan shows that not all the land that the rights are attached to is included in NYK316833, upon measuring the area, the land not included is extremely small and following Defra guidance is not significant when considering the merits of this application. **Appendix 7**.

The applicants have therefore evidenced their capacity to apply to have the rights surrendered under Regulation 7(1)(a).

This criteria has been met by the application.

Section 4 and 5 of Part A of the application has correctly identified the register unit and right entry concerned and given a description of the land that the rights are attached to as specified in Regulation 7(3)

Regulations 7(2) and 7(4) are not applicable to this application.

- 5.3 **Objection from The Spaunton Protection Association**  
Mr Allison, as Chair of the Spaunton Protection Association, objected on the grounds that The Act established that common rights cannot be alienated from the land or sold away.

The Act provides for the right holder of common rights to surrender their rights and have those rights removed from the register as set out in Section 13. This application has been submitted under Section 13 of The Act. Therefore it is a valid application. The basis for Mr Allison's objection is incorrect and as such has no bearing on the determination of this application.

## **6.0 Financial Implications**

- 6.1 There are no financial implications to the Council that ordinarily arise from its decision on the Application though it may incur costs in defending any legal challenge made to that decision. It is outside the Council's control whether or not any interested party attempts such a challenge.

## **7.0 Legal Implications**

- 7.1 The mechanism for challenge by an aggrieved party to any decision reached by the County Council in this matter would be by Judicial Review.

## **8.0 Equalities Implications**

- 8.1 Consideration has been given to the potential for any adverse equality impacts arising from the recommendation and an Equality Impact Assessment screening form is attached at **Appendix 8**.

## **9.0 Climate Change Implications**

- 9.1 As the Application seeks to change the status of the grazing rights and not the merits or otherwise of making the change; a full climate change impact assessment is not required

## **10.0 Conclusion**

- 10.1 It is your officer's view that on the balance of probabilities, and for the reasons set out in this report, the legal tests as set out in Section 13 of the Act and Schedule 4, paragraph 7 of The Regulations are met by the Application and that consequently it should be approved

## **11.0 Recommendation**

- 11.1 That the application is approved on the grounds set out in this report.

KARL BATTERSBY  
Corporate Director - Business and Environmental Services

Author of Report: Jayne Applegarth – Commons Registration Officer

Background Documents: Application case file held in Commons Registration, Network Information and Compliance – Business and Environmental Services