



# Application Decision

**by Richard Holland**

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

Decision date: 17 October 2019

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**Application Ref: COM/3234153**

**Long Meadow, Herefordshire**

Register Unit No: CL 136

Commons Registration Authority: Herefordshire Council

- The application, dated 25 June 2019, is made under Section 38 of the Commons Act 2006 (the 2006 Act) for consent to carry out restricted works on common land.
  - The application is made by Mr I K Johnson.
  - The works comprise approximately 1105 m of wooden stake and post supporting double strand barb fencing and two 10-foot-wide access gates.
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## Decision

1. Consent is granted for the works in accordance with the application dated 25 June 2019 and accompanying plan, subject to the following conditions:
  - (i) the works shall begin no later than three years from the date of this decision;  
and
  - (ii) the fencing shall be removed on or before 17 October 2029.
2. For the purposes of identification only the location of the works is shown as a red line, and the location of the access gates marked "G", on the attached plan.

## Preliminary Matters

3. The application originally sought permanent consent but has since been amended and now seeks temporary consent for 10-15 years.
4. I have had regard to Defra's Common Land Consents Policy<sup>1</sup> in determining this application under section 38, which has been published for the guidance of both the Planning Inspectorate and applicants. However, every application will be considered on its merits and a determination will depart from the policy if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the policy.
5. This application has been determined solely on the basis of written evidence.

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<sup>1</sup>Common Land Consents Policy (Defra November 2015)

6. I have taken account of the representations made by the Open Spaces Society (OSS) and Natural England (NE).
7. I am required by section 39 of the Commons Act 2006 to have regard to the following in determining this application:-
  - a. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
  - b. the interests of the neighbourhood;
  - c. the public interest;<sup>2</sup> and
  - d. any other matter considered to be relevant.

## **Reasons**

### ***The interests of those occupying or having rights over the land***

8. The landowner is also the applicant. The common rights holders have been consulted about the application and have not objected. I am satisfied that the works are likely to benefit the interests of those occupying the common and there is no indication that the works will harm the interests of those having rights over the common.

### ***The interests of the neighbourhood and the protection of public rights of access***

9. The interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the common land is used by local people. The applicant explains that the works are part of a larger scheme to exclude livestock from the vicinity of the river to benefit wildlife, regenerate bankside trees and vegetation and prevent soil erosion. The applicant confirms that it is not possible to exclude stock from the rest of the common as it is part of a larger field farmed as a business. Alternative water sources (troughs) will be installed elsewhere on the field to ensure that stock do not enter the watercourse.
10. The OSS is of the view that the works will have an adverse impact on public access and enjoyment of the common as once it is fenced off the riverbank would grow scrubby. The OSS and NE agree that any consent, if granted, should be temporary for ten years. In response, the applicant confirms that two 10-foot-wide gates will be installed within the fencing to maintain public access and that the stretch of the river is not well used by the public due to its steep banks, livestock and a sewerage outfall along its length; this latter point is not disputed by OSS or NE.
11. I consider that the impact of the works will be limited given that the location is not popular with local people and the wider public. I am satisfied that the works will not unacceptably interfere with the way the common is used by local people or the public as access will be maintained for all users through the provision of gates. I conclude that the works will not harm the interest of the neighbourhood and the protection of public rights of access.

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<sup>2</sup>Section 39(2) of the 2006 Act provides that the public interest includes the public interest in; nature conservation; the conservation of the landscape; the protection of public rights of access to any area of land; and the protection of archaeological remains and features of historic interest.

### ***Conservation of the landscape and nature conservation***

12. NE comments that the quality of the River Arrow is only considered to be moderate mainly due to agricultural runoff and sedimentation. The proposal is to benefit the river and the banks but will have no benefit for the common as a whole. NE's National Character Area of the Herefordshire Lowlands states that there are opportunities to improve the river valley of the River Arrow which would include the improvement of vegetation along the river.
13. In response the applicant explains that the River Arrow has been identified in the Environment Agency's and NE's Catchment Nutrient Management Plan as being a major source of phosphate predominately from agricultural sources, such as livestock access. The works are part of a wider project to address sources of phosphate losses within the catchment and secure stock exclusion from the area. Habitat improvements to the River Arrow have resulted in an increase in fish and invertebrate. The applicant adds that the scheme is proposed due to the presence of three European Protected Species (Atlantic Salmon, White Clawed Crayfish and Bullhead) at the site that depend upon the river environment being in a good condition. The regrowth of natural vegetation will screen the works and the fencing proposed is visually less intrusive than stock netting. The works will be erected at a suitable distance from the riverbank to cope with flooding/flood damage.
14. I accept that it is likely, given the improvements to habitat along the River Arrow so far, that the resulting exclusion of stock will lead to further environmental improvements to the river and riverbanks. The common has no special landscape designation. While the works will have some limited impact on the landscape, I consider that this will be lessened by the growth of vegetation both around the fencing and along the riverbank. I conclude that, overall, the works are likely to result in some benefit to nature conservation interests and will conserve the landscape in the long term.

### ***Archaeological remains and features of historic interest***

15. There is no evidence before me to indicate that the works will harm archaeological remains and features of historic interest.

### **Conclusion**

16. I conclude that the works are likely to benefit nature conservation interests along the river and riverbank and will not adversely impact the other interests set out in paragraph 7 above. Consent will be limited to 10 years after which the effectiveness of the works can be assessed; if there continues to be a need for the fencing beyond this time a fresh application may be made. Consent is granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**

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LONG MEADOW

# SHEET 145

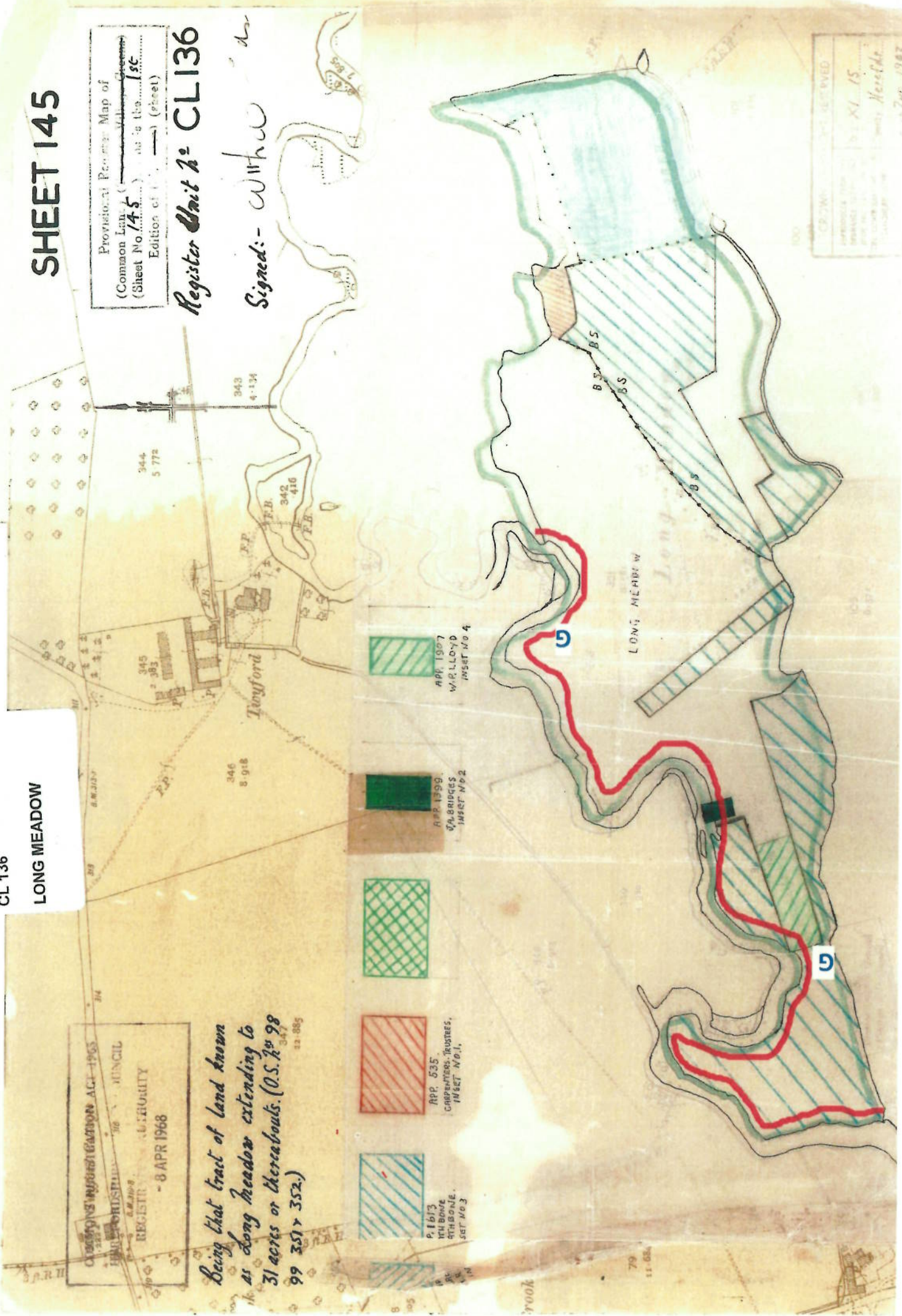
CHANGING JURISDICTION AGE 1965  
 FROM FORTSHILL TO COUNCIL  
 REGISTER AUTHORITY  
 - 8 APR 1968

*Being that tract of land known  
 as Long Meadow extending to  
 31 acres or thereabouts. (O.S. No 98  
 99 351 & 352.)*

Provisional Register Map of  
 (Common Law) (Sheet No. 145) at a scale of 1:500  
 Edition of 1968 (sheet)

Register Unit No. CL136

Signed: *W. H. W. H.*



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