

Authority of the Parish Council to act in relation to the Commons.

1. Are the Commons of Ilketshall St. Andrew & St. John “unclaimed land”?

The Commons Commissioner held hearings investigating the ownership of the Commons of Ilketshall St. Andrew & St. John, and arrived at conclusions that are stated in a report dated 19 January 1988.

[[https://acraew.org.uk/sites/default/files/uploads/Suffolk/\(8\)%20PART%20OF%20BLACKSMITHS%20COMMON%20-%20ILKETSHALL%20ST%20ANDREW%20-%20\(9\)%20PART%20OF%20GREAT%20COMMON%20-%20ILKETSHALL%20ST%20ANDREW%20NO.CL.125%20NO.CL.13.pdf](https://acraew.org.uk/sites/default/files/uploads/Suffolk/(8)%20PART%20OF%20BLACKSMITHS%20COMMON%20-%20ILKETSHALL%20ST%20ANDREW%20-%20(9)%20PART%20OF%20GREAT%20COMMON%20-%20ILKETSHALL%20ST%20ANDREW%20NO.CL.125%20NO.CL.13.pdf)]

The main conclusion from that report is in the penultimate paragraph, which says:

[“I am not satisfied that any person is the owner of the land”.](#)

There has been no claim of ownership since that date, and therefore the conclusion that the Commons is “unclaimed land” or has “no known owner” therefore prevails.

2. Who has authority over “unclaimed land”?

The report of the Commons Commissioner dated 19 January 1988 noted that the land

[“will therefore remain subject to protection under Section 9 of the Act of 1965.”](#)

The “Act of 1965” refers to the Commons Registration Act 1965. Section 9 is concerned with the protection of unclaimed Common land, and says:

[Where the registration under section 4 of this Act of any land as common land has become final but no person is registered under this Act or the Land Registration Acts 1925 and 1936 as the owner of the land, then, until the land is vested under any provision hereafter made by Parliament, any local authority in whose area the land or part of the land is situated may take such steps for the protection of the land against unlawful interference as could be taken by an owner in possession of the land, and may \(without prejudice to any power exercisable apart from this section\) institute proceedings for any offence committed in respect of the land.](#)

Note the [“any local authority in whose area the land or part of the land is situated”](#). This means that a Parish Council, **or** a District Council, **or** a County Council, can each take steps to protect the land, independently of each other. So, the 1965 Commons Registration Act clearly established that the Parish Council **does** have authority to take [“steps for the protection of the land against unlawful interference as could be taken by an owner in possession of the land, and may \(without prejudice to any power exercisable apart from this section\) institute proceedings for any offence committed in respect of the land.”](#)

3. What are the implications of the Commons Act 2006 for the authority of the Parish Council to take action to protect the Commons?

It is Section 45 of the Commons Act 2006 that is relevant here. Section 45 repealed Section 9 of the Commons Registration Act 1965. Section 45 reads as follows:

[Powers of local authorities over unclaimed land](#)

(1) This section applies where—

- (a) land is registered as common land or a town or village green;
- (b) no person is registered in the register of title as the owner of the land; and
- (c) it appears to a local authority in whose area the land or any part of it is situated that the owner cannot be identified.

(2) The local authority may—

- (a) take any steps to protect the land against unlawful interference that could be taken by an owner in possession of the land; and
- (b) institute proceedings against any person for any offence committed in respect of the land (but without prejudice to any power exercisable apart from this section).

(3) In this section “local authority” means—

- (a) a county, district or parish council in England;
- (b) a London borough council; and
- (c) a county, county borough or community council in Wales.

Going through that Section: Parts 1(a) & (b) and (c) all apply to the Ilketshall St. Andrew & St. John Commons, so a “tick” to all of those.

Part 2 clearly states what the local authority can do.

Part 3(a) states that “local authority” means a County Council, a District Council, or a Parish Council. So a “tick” to Part 3(a). The powers in Part 3(a) run **concurrently** so any one can act independently of any other.

4. What is the conclusion?

The inescapable conclusion is that Ilketshall St. Andrew Parish Council **does** have the legal authority, pursuant to Section 45 of the Commons Act 2006, to “take any steps to protect the land against unlawful interference that could be taken by an owner in possession of the land” and to “institute proceedings against any person for any offence committed in respect of the land.” Furthermore, comparable legal authority has applied since 1965 (at least) as a consequence of the Commons Registration Act 1965, and the Minutes of the Commoners’ Association provide evidence of the involvement in the Parish Council in matters relating to the Commons over many years.

Rod Apps
Parish Clerk
2 January 2025