



Proposal Decision

By Richard Holland

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

Decision date: 16 December 2011

Proposal Ref: COM 125
Wyson Common, Herefordshire.

Register Unit: CL12

Registration Authority: Herefordshire Council

- The proposal was made by Herefordshire Council ('the Council') under Section 19(2)(a) of the Commons Act 2006 ('the 2006 Act') to correct a mistake made by the Commons Registration Authority in making or amending an entry in the register.

Summary of Decision: The proposal is refused.

Preliminary Matters

1. This proposal has been determined on the basis of written evidence.

The Proposal Land

2. The proposal relates to an area of land adjacent to the south west corner of CL12, which was not registered as being part of the register unit under the Commons Registration Act 1965 but which the Council contends was mistakenly omitted from registration.
3. It is the Council's case that at the time the entry was made in the commons register, the land at issue was included in the description of the land in the Land section of the register but it was not included in the register map when it was drawn up. Therefore, despite its exclusion from the map, the land has always been part of common land register unit CL12.

The Statutory Requirements

4. The proposal has been made in accordance with the provisions of section 19(2)(a) of the 2006 Act.
 5. Section 19(2)(a) of the 2006 Act provides that a Commons Registration Authority (CRA) may amend its register of common land to correct a mistake made by the CRA in making or amending an entry in the register. Section 19(4)(a) permits a CRA to make amendments on its own initiative.
 6. The Commons Registration (England) Regulations 2008 (the 2008 Regulations) set out the procedures to be followed. Paragraph 18 of the 2008 Regulations requires that the CRA must –
 - (a) Prepare a statement in writing describing the proposal and explaining the justification for it;
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- (b) Publish a notice of the proposal on its website;
 - (c) Publish a notice of the proposal in one or more newspapers circulating in the relevant area as appears to it to be sufficient to secure adequate publicity;
 - (d) Serve notice on (i) any person who is recorded in the register as having entitlement to a right of common over the whole or any part of the register unit to which the proposal relates; (ii) any commons council or other body representing the interests of persons with rights of common over land to which the proposal relates; and (iii) any owner of a right of common in gross which is exercisable over the whole or any part of the register unit to which the proposal relates.
7. The task of proving the case in support of the correction of the register rests with the body making the proposal, and the burden of proof is the normal, civil standard, namely, the balance of probabilities.
8. Defra's guidance to the Planning Inspectorate¹ states that: "*It is particularly important thata proposal is fully examined where, if granted, it would have some effect on the public interest, such as where land would be deregistered. It is for the applicant to adduce [convincing] evidence, and in its absence, the application must not be granted.*"

Reasons

The Proposal

9. The Council's written statement of the proposal sets out the grounds on which it is considered that the area of land concerned should be added to the register map. A Notice of the proposal complying fully with the requirements of the 2008 Regulations was published in the *Hereford Journal* on 9 February 2011 and was included in the Council's website along with a 1:5000 scale plan showing the land concerned. The Council served notice of the proposal on persons registered as having a right of common over CL12, other local authorities, relevant organisations and interested parties. No objections to the proposal were received following its advertisement on site and in the press.
10. The Land section of the register notes that CL12 has no known owner and is subject to protection under section 9 of the Commons Registration Act 1965. Section 9 provides that 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.
11. I am satisfied that the relevant provisions of the 2008 regulations in respect of the proposal have been met and conclude that the proposal has been duly made.

Whether a mistake had been made by the Commons Registration Authority in making an entry in the register

12. An application under the Commons Registration Act 1965, made by Mr Graham Riley and dated 21 March 1967, to register Wyson Common as common land was received by Herefordshire County Council (the 'County Council') on 4 April 1967. A similar application by Mr George Blewitt, although dated 8 February

¹ Part 1 of the Commons Act 2006: Guidance to commons registration authorities and the Planning Inspectorate for the pioneer implementation, September 2011

1967 (preceding Mr Riley's application by some six weeks), was not received by the County Council until 18 May 1967. Wyson Common was subsequently provisionally registered on 18 April 1967 as common land unit CL12 pursuant to Mr Riley's application and the Land section of the register records this. The County Council wrote to Mr Blewitt on 12 June 1967 to advise that the land was already provisionally registered pursuant to Mr Riley's application.

13. In making his application, Mr Riley submitted a map showing the land he was applying to register. Reference is made to this map in the statutory declaration section of the application form, which he signed. This map would have been used as a basis for the CL12 register map. In making its proposal to amend the CL12 register map, the Council has been unable to locate the Riley map. Instead, it has provided the map that Mr Blewitt submitted with his own application which includes the area of land the Council contends is missing from the register map. However, this is not the map on which the registration was based and so there is no way of telling whether the area of land shown on the Blewitt map is the same as that shown on the missing Riley map. Mr Blewitt's map cannot therefore be given any weight in my decision.
14. The 1965 Act does not require applications for the registration of common land to describe the land in writing, only to provide a map showing the land. There is nothing in the limited description of the land in the register which confirms the exact boundaries of the common and without having sight of the map on which the application was based it is not possible to know whether the portion of land in question was ever meant to be included.

Conclusions

15. From the limited information available it is not possible to conclude with any certainty what the Council's intentions were when the registration application was decided and thus whether it made a mistake in making an entry in the register. Therefore, without convincing evidence that the mistake identified by the Council was actually made, the proposal cannot not be granted.

Formal Decision

16. The proposal is refused.

Richard Holland