Planning Inspectorate logo

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| **Application Decision**  Hearing held on 4 July 2023  **by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI**  **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs**  **Decision date: 22 August 2023** |

###### Application Ref: COM/3291403

###### Land known as Martha's Well and Beck Bottom, Hayton, Cumbria

***Register Unit No.: CL190***

***Registration Authority: Cumberland Council***

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| * The application, dated 10 June 2021, is made under Section 19(4)(b), and for the purposes of Section 19(2)(a), of the Commons Act 2006. | | | | |
| * The application is made by Hayton Parish Council. | | | | |
| * The application seeks the correction of an alleged mistake made by the commons registration authority in making or amending an entry in the register of common land. | | | | |
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**Decision**

1. The application is granted in accordance with the terms of the application Ref: COM/3291403 dated 10 June 2021, and the plans submitted with it.

**Preliminary Matters**

1. I held a public hearing into the application in the Education Room at Cumberland Council, Lady Gilford’s House, Petteril Bank Road, Carlisle, CA1 3AJ on 4 July 2023, having visited the site unaccompanied the previous afternoon. At the close of the hearing the consensus view was that there was no need for a further inspection of the application land.
2. The application was referred to the Planning Inspectorate under Regulation 26 of the Commons Registration (England) Regulations 2014 (the Regulations) by the commons authority (CRA) on 18 January 2022, which at the time was Cumbria County Council (CCC). However, since the submission of the application CCC ceased to be on 1 April 2023 and was replaced by 2no. unitary authorities; Cumberland Council and Westmorland and Furness Council. For the purpose of this application, the relevant authority is Cumberland Council.
3. This application has been referred due to persons with a legal interest in the application land having objected to their land being included in the register. On this point, I made it clear at the hearing that whilst ownership is recorded in the register of common land, it is not my role here to determine ownership of any land where it is disputed. In view of this, CRA representatives appeared at the hearing in a neutral capacity.
4. A total of 3no. representations were submitted in relation to the application, including one from The Open Spaces Society (the OSS). All of which, attended the event with the exception of the OSS. Nonetheless, I have considered all submissions, both in writing and orally, in reaching my decision on this application.

###### The Application Land

1. The application relates to a part of the parcel of common land registered as CL190. This application land is located to the east of Beck Cottage and mostly comprises hard surfacing forming part of the road that leads to Brier Lonning. Directly towards the east of the access is a field gate secured to stone walls, which are historic and define the boundaries of neighbouring land and properties in the immediate locality. To the south the levels rise towards Fenton Gate, where an area of grassed open space (the grassed area) is located that has some park benches present and in the south east corner of this area, a mature Walnut tree. A cobbled footpath exists between the grassed area and a property known as ‘Kinrara’, which enables convenient access to the application land from Fenton Gate.
2. Originally, the application proposed to include land beyond the field gate, which would taper away and terminate approximately at the eastern side boundary of the adjacent grassed area. This would have meant including land in the ownership of the occupiers of ‘Castle Hill’. However, at the event it soon became apparent that all parties were in agreement that the plan accompanying the application was not correct and that the application land should not extend beyond the field gate and stone walls. The explanation for this occurrence given by the applicant, was that there had been a change in personnel at Hayton Parish Council, and the previous Clerk accepted the initial plan produced by the CRA in error. The effect of the pandemic and the subsequent restrictions placed upon the CRA and the applicant was cited as a probable cause for the application progressing in its initial form.
3. Due to the overwhelming agreement of all parties on this matter a lengthy discussion took place surrounding the submitted plan and whether or not, a form of words could provide adequate clarification on the extent of the application land, given the different hatched areas present. In this regard, it was quickly established through discussions and particularly comments made by a local resident that the notification plan would not facilitate such an approach.
4. Thus, the possibility of an amended plan being produced and submitted, showing the agreed location of the application land in accordance with the agreed position following discussions at the event was discussed. Consequently, following an invitation to the applicant, CA10/58 Amended Plan of Application Land (the amended plan) was received on 14 July 2023 from the CRA. This amended plan accurately identifies the application land in accordance and with regard to the discussions that took place between all parties at the event.
5. Interested parties were given the opportunity to comment on the amended plan, but no additional comments have been received contrary to those discussions that took place at the event and no additional comments were received from the OSS. Thus, for the purpose of this application, I will not prejudice anybody by accepting the amended plan, which shows the application land outlined in red and not extending further than where the existing road/track ends (coloured grey). This is also where the field gate and stone walls are located.

**The Statutory Requirements**

1. Section 19(4) of the Commons Act 2006 (the 2006 Act) provides that any person may apply to the CRA to correct an alleged mistake in the register of common land or town or village greens. The Regulations set out the procedures to be followed.
2. The application form confirms that it has been made for the purposes of Section 19(2)(a) of the 2006 Act which provides that an application can be made to correct a mistake made by the registration authority in making or amending an entry in the register.
3. Section 19(5) provides that a mistake in the register may not be corrected if the authority considers that, by reason of reliance reasonably placed on the register by any person or for any other reason, it would in all the circumstances be unfair to do so.
4. An application must be made in accordance with the Regulations. Paragraph 16 of those Regulations requires that an application must:
   1. be made in writing on a form provided by the registration authority to which the application is made; and
   2. be signed by, or by a representative of, every applicant who is an individual, and by the secretary or some other duly authorised officer of every applicant which is a body corporate or an unincorporated association.
5. In addition, paragraph 11 of Schedule 4 to the Regulations requires that an application made under Section 19(4)(b) must include:

## a statement of the purpose of the application; namely the mistake in the register that has been identified by the applicant and the nature of the correction being sought;

## the number of the register unit to which the application relates;

* 1. evidence of the mistake or other matter in the register in respect of which the application seeks correction; and
  2. a description of the amendment sought in the register of common land.

1. The onus of proving the case in support of the correction of the register of common land rests with the person making the application, and the burden of proof is the normal, civil standard, namely, the balance of probability.

**The Main Issues**

1. The main issue is whether the evidence submitted is sufficient to show, on a balance of probability, that a mistake was made by the CRA when, on the basis of an application in 1968 from Hayton Parish Council, it recorded part of CL190 on its provisional register of common land and subsequently its final register of common land.

###### Reasons for the decision

1. The application complies with the requirements of paragraph 16 of the Regulations and was accompanied by all the information required by paragraph 11 of Schedule 4. It was supported by numerous plans, with particular regard to the application plan, identifying the proposed new boundary and a copy of the map submitted with the original application for registration submitted by Hayton Parish Council in June 1968 (the original map). In addition, a number of maps, including those from the Commons Register were provided.
2. Following the process required under the Commons Registration Act 1965, on receipt of the application in 1968, the registration authority (in this case the former Cumberland County Council) drew the claimed common land onto a provisional map, which was issued on 4 September 1969. Details from the provisional map (no 475) were subsequently transferred to the final registration map, issued on 1 August 1972 and written details recorded in the accompanying register.

***Whether a mistake was made by the registration authority such that the register should be corrected***

1. CL190 consists of 2no. separate parcels of land, Martha’s Well and Beck Bottom. The applicant is of the view that the CRA made a mistake as the current location of the Beck Bottom parcel was incorrectly transposed onto the register from the original map. The current location of Beck Bottom was initially identified on the notification plan, first submitted with this application, through red cross-hatching. The proposed correct location was identified on the notification plan through green cross-hatching, thus forming the application land. A small section of the red and green cross-hatching on the notification plan overlapped amounting to approximately 0.009ha. The applicant originally requested that the mistake is corrected in accordance with the original map and within the boundary of the application land.
2. For the reasons previously outlined earlier in my decision, it very quickly became clear that all parties present agreed that the initial plan subject of this application was a little confusing and inaccurate. It was also agreed by all parties that the original map was ambiguous, particularly through the lack of accuracy of the identified area. On the original map, the boundary of the common land can be interpreted to include land beyond the field gate and in the ownership of the occupiers of Castle Hill. Although, I accept that this does not look like a deliberate act and was referred to as a ‘smudge’ by the objectors. I cannot disagree with this description.
3. I have studied very closely the maps supplied with the application, which provide little assistance on this matter. However, the submission from the occupiers of Castle Hill is compelling and logical. This submission is supported by comments from a local resident who has resided in Hayton for a considerable period of time. Therefore, in the absence of any correspondence from the late 1960s or minutes of relevant meetings, it is impossible to know with any certainty whether Cumberland County Council intentionally included land beyond the field gate and stone walls on its provisional map and, later, on its final map. Thus, on the balance of probabilities, and on the basis of all the documents and comments provided by the applicant, objectors and interested parties, I am satisfied that the available evidence demonstrates a mistake was made in recording this part of CL190. This is reinforced by the collective agreement of all parties present at the event with regards to the extent of the application land now identified in the amended plan.

***Whether any party places or has placed reliance upon the register such that the correction of the entry would, in all the circumstances, be unfair***

1. No arguments were submitted in relation to this issue.

***Other matters***

1. The procedures prescribed by the Regulations in connection with this application have been followed, thereby allowing any person (adult or child) to submit views on the requested alterations. There is no scope for consideration of any other interests; the merits of planning permissions in the immediate locality are not relevant, nor does this decision alter any existing rights of access to land beyond the field gate from the common.

**Conclusion**

1. Whilst there is no direct evidence available to explain why the former Cumberland County Council included land beyond the field gate within CL190, I find, on a balance of probabilities that overall, there is a lack of accuracy on the original map and therefore the identification of the application land. Given the agreed position of all contributing parties, including the applicant, I find the circumstances and evidence supporting the application to be convincing and very persuasive. Additionally, this amendment will still preserve the area in accordance with its mid to late nineteenth century origins, as an area for obtaining water.

###### Formal Decision

1. In the absence of evidence to the contrary, I find that a mistake was made in relation to the recording of CL190 as alleged in the application. Therefore, the application is granted, and the land shown within the red line on the amended plan at Annex 1 shall be added to the register of common land as an amendment to the register unit CL190.

W Johnson

INSPECTOR

**APPEARANCES**

In support of the application:

Mr N Phillips Clerk at Hayton Parish Council

Opposing the application:

Ms M Thorne Local Resident

Mr S Tonkin Local Resident

Interested party:

Mr B Brian Local Resident

For the CRA:

Mrs S Bainbridge Commons Registration Officer for CC

Mr J Weatherill Commons Registration Officer for CC

**DOCUMENTS**

1. CA10/58 Amended Plan of Application Land, received 14 July 2023.

**ANNEX 1**

**Not to Scale**

