



Application Decision

By Alan Beckett BA MSc MIPROW

An Inspector appointed by the Secretary of State pursuant to Regulation 4 of The Commons Registration (England) Regulations 2008 to determine the application.

Decision date: 06/05/16

**Application Ref: COM 651
Boulsworth Hill**

Register Unit: CL 183

Registration Authority: Lancashire County Council

- The application, dated 18 November 2010, is made under section 19 (4) (b) for the purposes of Section 19 (2) (a) of the Commons Act 2006 ('the 2006 Act').
- The application is made by United Utilities plc ('the Applicant').
- The application is for the correction of a mistake made by the commons registration authority in making or amending an entry in the register of common land.

Decision: The application is granted and the land crossed hatched green on the plan appended to this decision shall be removed from the registration of CL 183.

Preliminary Matters

1. The sole objection (made by the Open Spaces Society and the British Horse Society) to the application to amend the register was withdrawn on 10 April 2015 on the completion of a settlement deed between the Open Spaces Society, the British Horse Society (as applicants for the registration of Boulsworth Hill as waste land of a manor) and the Applicant and others.
2. The Applicant did not wish to make oral representations in respect of the application. I have not visited the site and I have determined the application on the basis of the written material forwarded to me.

The Application Land

3. The application relates to that parcel of land known as Will Moor Clough shown hatched green on the plan appended to this decision which was registered as part of Boulsworth Hill (CL 183) under the provisions of the Commons Registration Act 1965 but which the Applicant contends was mistakenly registered.
4. It is the Applicant's case that at the time the entry was made in the commons register the land at issue was not common land. It is contended that when the commons registration authority amended the register map for CL183 following a determination in 1981 by the Chief Commons Commissioner, it had included Will Moor Clough instead of excluding it from registration. It is argued that the registration of Will Moor Clough was not in accordance with the determination of the Chief Commons Commissioner.

The Main Issues

5. The application has been made in accordance with the provisions of section 19 (4) (b) of the 2006 Act for the purposes of Section 19 (2) (a) of that Act. The main issue is whether a mistake was made by the registration authority in the registration of Will Moor Clough as common land. Section 19 (5) of the 2006 Act 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.
6. The onus of proving the case in support of the correction of the register rests with the person making the application, and the burden of proof is the normal civil standard, namely, the balance of probabilities.

Reasons

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

7. The original extent of register unit CL 183 was registered as a result of a rights application made on 10 April 1969 by Mr Leonard Hartley of Bents Bungalow Farm. A further three rights claims were made in relation to that part of CL 183 shown on the appended map as Deerstone Moor and Will Moor. The rights entries made in the register in relation to the greater part of Boulsworth Hill were subject to objections made on behalf of the North Calder Water Board (a predecessor of the Applicant) which stated that there were no grazing rights on its land.
8. The disputed registration of grazing rights was determined by the Chief Commons Commissioner at a hearing held on 29 January 1981. As a result of that hearing the third and fourth rights applications became void. The second rights application was unopposed at the time of the hearing and agreement had been reached that the rights claimed in the first application were limited to the same land affected by the second rights application; that is, land to the west of the boundary of the former Borough of Nelson and outwith the land owned by the North Calder Water Board.
9. Having heard the evidence and argument put to him the Chief Commons Commissioner determined that the grazing rights claimed were restricted to Deerstone Moor and Will Moor and directed that the register be modified by excluding "*all the land other than Deerstone Moor and Will Moor*".
10. From the maps attached to the second and third rights applications it can be seen that those claimed rights did not include land to the east of the Nelson Borough boundary and therefore did not include Will Moor Clough. However, Will Moor Clough was included in the register map as amended by the commons registration authority. On the amended register map, the registered land included land which was not subject to the second and third rights applications and which the Chief Commons Commissioner had directed should be excluded from registration.
11. I conclude from the above that in amending the register and map in the way it did following the determination by the Chief Commons Commissioner, the commons registration authority mistakenly included land which the Chief

Commons Commissioner had directed should be excluded. It follows that I conclude that the register should be corrected.

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

12. Statutory declarations have been made by Mr Alan Greenwood, the tenant of the land subject to this application and by Mr Ian Hartley who holds grazing rights over register unit CL 183. Both individuals have confirmed that the correction of the register by the removal of Will Moor Clough will not have any detrimental impact upon them or their families.
13. In light of the above, I conclude that no party has placed reliance upon the register to the extent that the correction sought by the Applicant would be unfair.

Conclusions

14. Having regard to these and all other matters raised in the papers before me I conclude that as the criteria set out in section 19 (2) (a) are met it follows that the application should be granted.

Alan Beckett

INSPECTOR

APPENDIX – plan not to scale

