
Application Decision

Hearing held on 28 June 2017

By Alan Beckett BA MSc MIPROW

An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 26/07/2017

Application Ref: COM 3171502
Allendale Common, Northumberland.

Register Unit: CL1

Registration Authority: Northumberland County Council

- The application was made by Mr Leslie Smith under Section 19 (2) (a) of the Commons Act 2006 ('the 2006 Act') to correct a mistake made by the Commons Registration Authority ('CRA') in making or amending an entry in the register.

Summary of Decision: The application is not granted.

Preliminary Matters

1. I held a public local hearing into the application on 28 June 2017 having made an unaccompanied inspection of the site the afternoon before. At the hearing, representations in support of the application were made by Mr Smith. Neither of the two statutory objectors (Allendale Estates and the Open Spaces Society) were represented at the hearing. Miss Lancaster attended the hearing on behalf of the CRA as a non-participating observer. This application has been determined on the basis of the submissions made at the hearing, the written representations received and my observations of the site.

The application land

2. The application relates to that parcel of land shown edged red and hatched blue on the plan appended to this decision which was registered as being part of Allendale Common (CL1) under the provisions of the Commons Registration Act 1965 ('the 1965 Act') but which Mr Smith contends was mistakenly registered.
3. It is Mr Smith's case that at the time the entry was made in the commons register, the land at issue was not part of Allendale Common. It is Mr Smith's contention that the plan attached to the application made under the 1965 Act by Allendale Estates to be registered as the owners of Allendale Common had been misinterpreted by the CRA; the base plan was at a small scale and the line of claimed ownership had been incorrectly drawn on the register map and had included land which had formed part of the curtilage of Clayhole since at least 1913.

The Statutory Requirements

4. The application was made in accordance with the provisions of section 19 (2) (a) of the 2006 Act.
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5. Section 19 (2) (a) of the 2006 Act makes provision for the CRA to amend its register of common land to correct a mistake made by the CRA in making or amending an entry in the register.
6. The task 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.
7. Defra's guidance states that: "*It's up to the applicant to prove that the application satisfies all of the criteria. If any evidence is missing, or nobody has opposed an application, you must not assume that the applicant has met all the criteria. You must refuse an application if the applicant cannot supply all the required evidence*".

Reasons

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

8. Mr Smith has owned the property known as Clayhole since 1985. Copies of conveyances dated 1913 and 1920 demonstrate that the land shown edged red and hatched blue on the attached plan has been part of Clayhole and the conveyance plans show that at the time of these conveyances, an extension to the house had stood on the land. Mr Smith's understanding is that the extension had been demolished in the late 1970s.
9. The extension to the house is shown on Ordnance Survey mapping which is contemporaneous with the conveyances and also shows the extent of the Clayhole land being defined by a fence or wall. In the north-eastern corner of the property stand two mature trees which Mr Smith says must have been protected from the animals grazing the common by a wall or fence in order for them to have become established.
10. In 2014 Mr Smith contemplated installing a new foul drainage system in the property and had consulted with Natural England over his proposals as he was aware that his property was adjacent to a Site of Special Scientific Interest. It was during these consultations that he was made aware that part of his property was registered as being part of Allendale Common.
11. Mr Smith had consulted the CRA regarding the registration process and had been provided with a copy of the application made by the Allendale Estate to register ownership of Allendale Common. This application (no. 285) had been made on 26 June 1968 alongside the Estate's application (no. 281) of the same date to register Allendale Common as common land. Application no. 285 was accompanied by a small-scale plan showing the extent of the land over which the Allendale Estate claimed ownership.
12. It is Mr Smith's contention that the CRA had misinterpreted this plan when drawing up the commons register and had included the land belonging to Clayhole as part of the common as the small scale of the application no. 285 plan made it impossible to distinguish the boundary of the Clayhole property from that of the Allendale Estate. Mr Smith points out that on the large-scale map which the CRA used to compile the register, the boundary wall between Clayhole and the common was clearly shown. Mr Smith stated that the application no. 285 map was the only map he had been provided with and had no information regarding maps which may have accompanied other applications in relation to Allendale Common.

13. Mr Smith acknowledges that the burden of demonstrating that a mistake had been made lies with him. In order for consent to be granted I have to be satisfied that the evidence adduced demonstrates that a mistake was made when the CRA originally registered the extent of the common. Generally, a registration authority was required under the 1965 Act to give effect to any duly made application for registration made to it at the proper time, regardless of its merits. However, where there is evidence that the map supplied by an applicant contained an error which was faithfully reproduced in the register it would not be possible to correct that error under section 19 because the registration authority did not make the mistake.
14. Whilst Mr Smith contends that the CRA mistakenly transcribed the details contained within the application no. 285 map, the land section of the commons register does not demonstrate that application no. 285 was the application which caused the CRA to register Allendale Common as common land.
15. Entry no. 1 in the land section of the register is dated 18 January 1968 and states that Allendale Common had been registered "*in consequence of application no.2 (Rights)*". The entry in the register is dated some five months prior to Allendale Estates making application nos. 281 and 285. The conclusion I draw from this is that the CRA could not have used the plan attached to application no. 285 to register the boundary of the common as the common had been added to the register five months before application no. 285 was made.
16. It is highly likely that the CRA's understanding of the boundary of the common was based on the information contained within application no. 2. No evidence has been submitted regarding application no. 2 and in the absence of any evidence relating to that application it is not possible to determine whether the CRA did or did not accurately record the extent of the common claimed in that application.

Conclusions

17. Additional research into application no. 2 may reveal evidence that sheds further light on this matter. However, I am not persuaded that the CRA mistakenly transcribed the map attached to application no. 285 when it originally recorded the boundaries of Allendale Common. I do not consider that Mr Smith has produced convincing evidence that a mistake was made when the CRA first compiled the register.

Formal Decision

18. The application is not granted.

Alan Beckett

INSPECTOR