
Application Decision

Hearing held on 5 April 2018

Site visit made on 3 April 2018

by Alan Beckett BA MSc MIPROW

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

Decision date: 4 June 2018

Application Ref: COM 3183692

Maunby Village Green (War Memorial Site), Maunby, North Yorkshire

Register Unit: VG 65

Commons Registration Authority: North Yorkshire County Council

- The application, dated 6 February 2017, is made 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.
 - The application is made by Mr & Mrs Watts ('the Applicants').
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Decision: The application is granted.

Preliminary Matters

1. I held a hearing into the application at County Hall, Northallerton on 5 April 2018 having made an unaccompanied inspection of the village green on the afternoon of 3 April 2018. At the hearing the Applicants represented themselves. The objector, Maunby, Newby Wiske and South Otterington Parish Council was represented by Mr Bowe with support from Mr Carter and Mrs Bowe. Mrs Applegarth was present on behalf of the Commons Registration Authority ('CRA').

The Application Land

2. The land at issue in this case is the small parcel of land shown edged red on the plan attached to this decision. It is recorded in the register as being part of the War Memorial Site of Maunby Village Green VG 65 and is located at the western edge of the land on which the War Memorial is located.
3. It was the Applicants' case that the CRA at the time (North Riding County Council) had erred when it transferred to the register map the information shown in the plan attached to the Statutory Declaration which accompanied the application made on behalf of Maunby Parish Meeting. In the Applicants' view, there was a clear discrepancy between what the Parish Meeting had sought to have registered, and what was shown on the provisional edition of the register map. The Applicants submitted that their evidence demonstrated that at the time of the provisional registration, the Application Land had been regarded as part of Acacia House and not part of the village green and that extent of the village green shown on the register map was mistaken and should be corrected.

The Main Issues

4. The application 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 CRA may amend its register of town or village greens to correct a mistake made by the CRA in making or amending an entry in the register.
6. The main issue is whether the entry made by the CRA as entry no 1 in the land register for VG65 was mistaken and requires correction.
7. The onus of proving the case in support of the correction of the register rests with the person making the application and it is for the applicant to adduce sufficient evidence to merit granting the application. The burden of proof is the normal civil standard, namely, the balance of probabilities.

Reasons

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

8. Entry No. 1 in the land section of the register reads "*The Parcels of land known as (1) The Green, Maunby and (2) War Memorial Site, Maunby in the Parish of Maunby as shown edged green on sheet no. 65 of the register map (provisional edition) and distinguished by the number of this register unit. Registered pursuant to application no. 85 made the 4th March 1968, by Maunby Parish Meeting acting through their Chairman Herbert Farndale, Red House Farm, Maunby, Thirsk*".
9. Entry No. 2 in the land section of the register reads: "*The registration at Entry No. 1 above being undisputed, became final on the 1st October 1970*".
10. Two editions of the provisional register map were prepared by the CRA as a result of the application made to it on behalf of Maunby Parish Meeting. The map dated 15 September 1969 bears the certification required by regulation 19 of the Commons Registration (General) Regulations 1966 and is the map which is included in the Register. This map carries the stamp '*provisional register map of town or village greens (sheet no 65). This is the second edition of this sheet*'. It is the extent of the village green shown in this second edition map which became final on 1st October 1970.
11. The stamp affixed to the 1969 map implies that there had been an earlier edition. A second map had been discovered by the CRA amongst its files and is dated 18 March 1968, but does not bear the certification that it was a provisional register map. Although the 1968 map is clearly part of the background papers to the registration process and the CRA considered it to be the first edition of the provisional register map, the absence of the certification required by regulation 19 means that there is some doubt as to the status of this map.
12. Irrespective of the status of the 18 March 1968 map, both it and the second edition of the provisional register map show the War Memorial Site as including the Application Land. From 1st October 1970 this land has been registered as part of the War Memorial Site.

13. The plan which accompanied the Statutory Declaration made in support of the Parish Meeting's application shows by means of a red line boundary and solid red colouring what was regarded as the extent of the War Memorial Site. Neither the red line boundary nor the solid red colouring on the Statutory Declaration plan extends over the Application Land.
14. It is apparent from the Statutory Declaration plan that some attempt has been made to distinguish between parts of the War Memorial Site. The eastern and western ends of the site are shown edged red whereas the body of the site is coloured red. It is suggested that the two areas edged red represent parts of the site over which access to adjacent fields had been obtained. Although there is currently only a single field to the north of the site with access to the field being through the gate at the field's south-eastern corner, the 1912 Ordnance Survey map shows that there were once two fields to the north of the site. The two blocks edged red may indicate that the Parish Meeting recognised that access to both fields had historically been over what became the War Memorial site¹.
15. Irrespective of whatever may be construed as the reason for the differentiation between parts of the site, and despite some of the solid red colouring spilling over into the eastern part of the site edged in red, the extent of the War Memorial Site shown on the Statutory Dedication plan does not encompass the Application Land.
16. The Application Land provides a means of access to the rear of Acacia House and to other properties in The Row. Although the Application Land is not physically separated from the remainder of the War Memorial Site, it is the Applicants' case that the Application Land is (and has been) part of the Acacia House property and has been treated as such in conveyances from at least 1978.
17. In a conveyance dated 28 April 1978, the then Chairman of Maunby Parish Council (a Mr Campbell) sold Acacia House to a Mr & Mrs Peel. Part of the land conveyed included the Application Land and Mr Campbell had obtained a Statutory Declaration from a resident of the village who had personal knowledge that the Application Land had been used as "a roadway or driveway" to the house for at least 60 years with no adverse claim on the land being made by any party.
18. The Applicants' deeds to their property show that in 1974, Acacia House had been conveyed to Mr Campbell by Messrs Farndale and that the Application Land had been delineated on the conveyance plan as part of the property with the property boundary as extending to the edge of the road.
19. In February 1978, and therefore contemporaneous to the sale of Acacia House, Mr Campbell had appeared on behalf of the Parish Council at a hearing presided over by Commissioner Baden-Fuller into the question of the ownership of the War Memorial Site. Although the registration of the War Memorial Site had been made final in October 1970, ownership had not been registered. At the hearing, Mr Campbell offered no evidence that the Parish Council owned the Site, and in the absence of any other evidence, Commissioner Baden-Fuller

¹ There is no War Memorial recorded on the 1912 OS map but is shown on the corresponding map of 1929.

- directed the CRA to register the Parish Council as the owner under section 8(3) of the Commons Registration Act 1965.
20. Commissioner Baden-Fuller's hearing related to the question of ownership of the War Memorial Site and not into its extent or the accuracy of the register map. The Applicants considered it significant that the then Chairman of the Parish Council appeared at the 1978 hearing at or around the same time as the conveyance of Acacia House and the Application Land was proceeding. In their view, the reference in the Commissioner's report to Mr Campbell speaking of '*these lands*' being '*important parts of the village*' could not be a reference to the Application Land as that was understood by Mr Campbell to form part of Acacia House.
 21. The Parish Council submitted a copy of a letter from Mr Campbell dated 17 March 2017 in which Mr Campbell stated that his property had not extended over the Application Land and that none of the properties on The Row had enjoyed exclusive ownership of the Application Land.
 22. I did not hear from Mr Campbell directly, but his recollections at 40 years distance are at odds with the documentary evidence to which he was a principal party. The conveyance signed by Mr Campbell demonstrates that he did consider himself to have exclusive ownership of the Application Land (although subject to the rights of access of others in The Row); consequently, I place little weight upon Mr Campbell's more recent submission.
 23. Conveyances from 1978 have all recorded the Application Land as being part Acacia House; in 2012 the CRA amended the ownership register to record the Applicants' ownership of the Application Land, with the ownership of the remainder of the register unit remaining registered to the Parish Council.
 24. It is known that the Ferndale family were the owners of Acacia House in 1968 when the application to register the village green was made and that Herbert Farndale was a relation of those Farndales who sold Acacia House in 1974. In such circumstances, I consider it highly likely that Herbert Farndale would have been aware of the position of the boundary between what was regarded as the village green and what was regarded as Acacia House and that the plan he submitted as part of his Statutory Declaration reflected his understanding of that property boundary.
 25. The available OS mapping suggests that there has not been a physical boundary between the War Memorial Site and Acacia House during any part of the twentieth century. The only explanation as to why the Application Land came to be shown as part of the War Memorial Site is that the CRA recorded the extent of the Site by reference to the physical boundaries shown on the base map and not by reference to what Mr Farndale had shown on his plan.
 26. On the evidence submitted, I consider it more likely than not that the CRA of the day mistakenly included the Application Land in the War Memorial Site of VG 65; the evidence before me suggests that the Application Land was not considered to be part of the War Memorial Site at the date of the provisional registration of the village green. I consider the omission of the Application Land from the plan which accompanied the application for registration to be evidence

that in 1968, the land did not have the local reputation of being part of the village green.

27. On a balance of probabilities, the inclusion of the Application Land as part of VG65 appears to have occurred as a result of a poor cartography when the extent of the land claimed as village green shown in the Statutory Declaration plan was transferred to the provisional map.

Conclusions

28. I conclude that the CRA's predecessor authority mistakenly included the Application Land as part of VG65 when originally making the entry in the land register for that register unit. As the criteria set out in section 19 (2) (a) of the 2006 Act are met, it follows that I also conclude that the land shown edged red on the plan attached to this decision should be removed from registration unit VG65.

Formal Decision

29. The application is granted and the land shown edged red on the plan attached to this decision shall be removed from the register of town or village greens.

Alan Beckett

INSPECTOR

Plan of the application Land (not to scale)

