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## Application Decision

Hearing held on 4 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: 04/06/2018**

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**Application Ref: COM 3175957**

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

Register Unit: VG 65

Commons Registration Authority: North Yorkshire County Council

- The application, dated 6 June 2016, 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 James Hill-Walker ('the Applicant').
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**Decision: The application is not granted.**

### **Preliminary Matters**

1. I held a hearing into the application at County Hall, Northallerton on 4 April 2018 having made an unaccompanied inspection of the War Memorial Site on the afternoon of 3 April 2018. At the hearing the Applicant represented himself. The objector, Maunby, Newby Wiske and South Otterington Parish Council was represented by Mr Bowe with support from Mr Carter. Mrs Applegarth and Miss Taylor were 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 eastern edge of the land on which the War Memorial is located. The Applicant owns the field to the north of the War Memorial Site with access to the field being obtained over the Application Land and through a gate in the south-eastern end of the Applicant's field.
3. It was the Applicant's 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 original application map produced on behalf of Maunby Parish Meeting.

### **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. If such a correction is required, a secondary issue is whether entry no 3 in the ownership register requires amendment.
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 4<sup>th</sup> 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 1<sup>st</sup> 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 plan which became final on 1<sup>st</sup> 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 as required by the regulations. 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. The Applicant considered that this map may have been submitted by the Parish Meeting along with its application, however this seems unlikely given that the map carries a different date stamp to the one on the application and is drawn on a full OS sheet whereas the Parish Meeting's Statutory Declaration plan appears to be a traced or copied extract from part of an OS sheet; if the Parish Meeting had access to a full OS sheet there would have been no need to produce a copy extract.

12. On the map dated 18 March 1968 the extent of the village green is shown edged black and with solid green colouring within the black edge; on this map, the Application Land is not shown as part of the War Memorial Site. On the provisional map dated 15 September 1969 the extent of the village green is shown edged green and includes the Application Land as part of the War Memorial Site. There is no evidence within the CRA's records to shed light upon why two provisional editions of the provisional map were produced or why the Application Land was depicted differently between the map dated 18 March 1968 and the provisional map of 15 September 1969.
13. The Applicant contends that the base map used between editions had changed with the earlier map showing the existence of an access track over the green whereas the later edition did not. However, the inset map used to show in detail the extent of the village green is the same in both the March 1968 and September 1969 editions and does not show the existence of any access tracks over the War Memorial Site. When the provisional registration of VG 65 became Final on 1<sup>st</sup> October 1970, it was the extent of the War Memorial Site shown in the September 1969 provisional edition which became registered as part of Maunby Village Green.
14. The plan which accompanied the Statutory Declaration made in support of the application to register the Village Green shows by means of a red line boundary and some solid red colouring what was regarded as the extent of the War Memorial Site. There are two parts of the Application Land which are shown edged red but not coloured red; one to the west of the site and one to the east – the easternmost parcel being the Application Land. The Applicant contends that if the intention of the Parish Meeting had been to register the Application Land then it would have coloured that land in red; the Applicant placed reliance upon the 1968 application form which stated that the land claimed as village green was coloured red.
15. The notes which provided guidance on how to complete the application state at note 3 that the "*main description of the land will be by the plan*" and that the plan "*must show the land to be described by means of distinctive colouring (a coloured edging inside the boundary will usually suffice)*". There was no requirement for the land shown on the plan to be wholly coloured and as Mr Bowe pointed out, it is customary in land transactions to identify the land at issue by means of colouring the edge.
16. If I were to follow the Applicant's argument that the use of red colouring indicated the land for which registration was sought, it would lead to the conclusion that the Parish Meeting sought registration of the block of land coloured in red along with thin strips of land on the north, east and south of the Application Land but not the land which was uncoloured; I consider this to be highly improbable. Given that the Parish Meeting identified the Application Land by means of a red edge in accordance with the mandatory guidance notes, it is highly likely that the Application Land was considered to be part of the War Memorial Site that should be registered.
17. It is apparent from the Statutory Declaration plan that some attempt has been made to distinguish between parts of the War Memorial Site by means of colour. 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 the Applicant's tenant taking access through the gate at the south-eastern corner of the field, 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 Site.

18. The Applicant places some reliance upon the 18 March 1968 map in support of his case as it does not show the Application Land as part of the land to be registered. If this plan had formed part of the register then it would demonstrate evidence of a mistake by the CRA in that it did not reflect the extent of the land for which registration was sought by the Parish Meeting. However, the 18 March 1968 map does not appear to have ever formed part of the Register and the question of whether a mistake was made by the CRA has to be answered by a comparison between the extent of the land finally registered (as shown on the second edition of the provisional register map) and the extent of land for which registration was originally sought.
19. With regard to the Application Land, it is clear that the 15 September 1969 second edition of the provisional register map accurately reflects the extent of the land edged red on the plan which accompanied the Parish Meeting's original application.
20. The test to be addressed under section 19 (2) (a) is whether the CRA made a mistake in making an entry in the Register. Under the provisions of the 1965 Act, the CRA was required to give effect to a duly made application for registration made to it at the proper time, irrespective of the merits of that application. A comparison between the extent of the land for which registration was sought and the Register plan does not indicate any discrepancy between the two as regards the Application Land.
21. It follows that the CRA did not make a mistake in making entry No. 1 in the Land section of the Register as it had faithfully transferred to the Register map the information contained in the plan attached to the Parish Meeting's Statutory Declaration.

### **Other matters**

22. The Applicant would like to have the Register amended in order that he may have unrestricted access to the field to the north, and expressed his concerns that access to the field with vehicles might result in damage to the surface of the village green. It was not disputed by the Parish Council that the Applicant had a right of access over the War Memorial Site to his field for agricultural purposes. Whilst I appreciate the Applicant's concerns, these are not matters I can take into account as they do not demonstrate that the CRA erred in making entry No. 1 in the land section of the register.

### **Conclusions**

23. I conclude that the Commons Registration Authority did not make a mistake when making entry No. 1 in the Land section of the Register for VG 65 with regard to the Application Land. As the criteria set out in section 19 (2) (b) of

the 2006 Act are not met, it follows that I conclude that the Register of Village Greens does not require amendment.

**Formal Decision**

24. The application is not granted.

*Alan Beckett*

INSPECTOR

Plan of the Application Land (not to scale)

