
Application Decision

Hearing held on 23 October 2019

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 26 November 2019

Application Ref: COM/3221458
Drabblegate Common

Register Unit: CL101

Registration Authority: Norfolk County Council

- The application, dated 8 February 2018, 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 Mr RN Dumolo, Mr JN Dumolo and Mr RW Dumolo.
- 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

1. The application is granted in accordance with the terms of the application [Ref: COM/3221458] dated 8 February 2018, and the plan submitted therewith.

Preliminary Matters

2. I held a public hearing into this application on Wednesday 23 October 2019 at Banningham Village Hall, Norfolk. I carried out an unaccompanied site visit on Tuesday 22 October. It was agreed by all parties at the hearing that a further accompanied visit was not necessary.

The Statutory Requirements

3. Section 19(4) of the 2006 Act provides that any person may apply to the commons registration authority to correct an alleged mistake in the register of common land or town or village greens. The Commons Registration (England) Regulations 2008 (the 2008 Regulations) set out the procedures to be followed.
4. The application was made on 8 February 2018. The application form indicates 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 commons registration authority in making or amending an entry in the register.
5. 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.

6. An application must be made in accordance with the 2008 Regulations. Regulation 16 of the 2008 Regulations requires that an application must –
 - (a) be made in writing on a form provided by the registration authority to which the application is made; and
 - (b) 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.
7. In addition, paragraph 11 of Schedule 4 to the 2008 Regulations requires that an application made under section 19(4)(b) must include –
 - (a) 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;
 - (b) the number of the register unit and the number of the rights section entry in the register to which the application relates;
 - (c) evidence of the mistake or other matter in the register in respect of which the application seeks correction; and
 - (d) a description of the amendment sought in the register of common land.
8. 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 probabilities.

Reasons

The Application

9. The application appears to have been properly made and advertised in accordance with the relevant statutory requirements. The application seeks the de-registration of land said to form part of the curtilage of No.15 Drabblegate and to have been registered as common in error. A copy of the map submitted with the application is attached for reference purposes.

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

10. Drabblegate Common was registered as common land following an application received in January 1968 from the chairman of Aylsham Parish Council (now Town Council). This described the common as lying between the River Bure and the road leading to Erpingham and bounded to the south by the property No. 15 Drabblegate. The application was accompanied by a plan on which the area for which the application was made was hatched and edged in red biro. This plan was small scale and marked by hand but nevertheless clearly excludes the building at No. 15 Drabblegate and an area of land to the north of it.
11. However, on 6 February 1968, Norfolk County Council, the Commons Registration Authority (CRA), provisionally registered as common all the land up to the building of No. 15 Drabblegate. No objections were made to the provisional registration and it was subsequently made final on 1 October 1970.
12. A second application for registration of the common was made on 18 April 1968 by Mr MV Dixon. This was after the common had been provisionally registered

- and the application was recorded as 'noted'. The map accompanying this second application showed the common extending up to the building of No. 15 Drabblegate.
13. It is argued by the applicants that there was clearly an error made by the CRA in that the map submitted with the parish council application was inaccurately reproduced and as a result land which formed part of the curtilage of No. 15 Drabblegate was wrongly registered as common. They point out that the then chairman of the parish council, Dr Sapwell, was a renowned local historian who had written a book on the history of Aylsham and who could be expected to have known the location of the boundary of the common.
 14. The CRA has itself accepted that an error was made when the common was registered and that the application should be approved. A similar conclusion was reached by the Open Spaces Society when consulted on the application.
 15. Objectors argued that, if a mistake had been made, it was more likely to have been by Dr Sapwell when drawing the plan and not by the CRA. The parish council would have seen the provisional registration plan which differed from the plan which accompanied their application, but they raised no objection to it. This was said to suggest an acceptance that the submitted plan had been inaccurate.
 16. It was also suggested that historical evidence supported this argument. The map prepared in connection with the survey carried out under the Finance Act 1910 appears to show the property now known as No.15 Drabblegate without any curtilage on the north side. However, the same map shows the boundary of the common some distance further to the north and the land between the common and No.15 Drabblegate, including the current application land, appears to have been excluded for some reason. Accordingly, it would seem from this map that, although the area of land now disputed was not regarded as being part of the curtilage of the property neither was it regarded as being part of the common.
 17. Ordnance Survey (OS) maps were also said to depict the disputed land as part of the common. The 1886 OS map shows the land in the same manner as land to the north now registered as common as do more recent maps. No boundary feature is marked between the claimed curtilage of No.15 Drabblegate and common land to the north. However, this does not necessarily mean that the land was regarded as being common land. OS maps are a reliable guide to features that existed on the ground when they were surveyed but they do not indicate land ownership or rights over land and it was common ground that the disputed land was not separated from the land to the north by a fence or other barrier.
 18. It was also alleged by objectors that previous owners of No.15 Drabblegate had accepted that the land was part of the common, but this was disputed by the applicants. The applicants' family acquired No.15 Drabblegate in 1950 and they maintain that the land for which de-registration is now sought has always been regarded as part of the curtilage of the property and has been occupied and used as such. The land consists of a gravel drive and an area of lawn.
 19. In 1989, the then owner of the property, Mrs Vera Dumolo, sought a mortgage in connection with proposed building renovation and was required to confirm that no other rights existed over the property. Accordingly, a Commons Search

- was requested from the CRA. This was returned showing the land for which de-registration is now sought to be part of the curtilage of the property and not part of the common. This was accepted by Mrs Dumolo and her solicitors. More recently, in 2017, the CRA has stated that this search result was erroneous as it did not reflect the registered boundary of the common.
20. In 1997, Mrs Dumolo applied for permission to remove a horse chestnut tree within the currently claimed boundary of the curtilage of No.15 Drabblegate close to the northern edge of the land for which de-registration is now sought. The district council replied that permission was not required and Mrs Dumolo paid for the removal of the tree. It was suggested that she would not have done this if she had believed the tree to be on common land.
 21. However, a number of objectors stated that they had been acquainted with Mrs Dumolo and that she had told them that the common extended up to her back door.
 22. The applicants applied for voluntary registration of the property No.15 Drabblegate in December 2017 and in January 2018 HM Land Registry registered Title Absolute to the applicants over the property including the land for which de-registration is now sought. It was stated at the hearing that this registration may be contested by commoners. However, whether it is accepted that the land is owned by the applicants or not does not necessarily determine whether it should have been recorded as part of the common.
 23. Reference was made both by the applicants and some objectors to the fact that the common was owned by the Lord or Lady of the Manor, currently Mrs J Sapwell. Mrs Sapwell has on different occasions expressed different views but did not object to the application for the de-registration of the disputed land. Her most recent letter (dated 7 September 2019) appears to state that she believed that only part of the land in question was the subject of the application and she now does not agree to the land being registered as part of the property No.15 Drabblegate. However, I have seen no evidence to suggest that Mrs Sapwell has raised any claim to the land with the Land Registry.
 24. One objector also questioned the precise boundary of the land sought to be de-registered and, by enlarging the original parish map many times sought to demonstrate that it only excluded part of the land from the common. However, the original parish map, drawn by hand on a small scale base map cannot appropriately be analysed in this way. What the map shows is a gap between the proposed boundary of the common and the building of No.15 Drabblegate which may well have reflected the perceived extent of the curtilage of that property.
 25. Overall, despite some inconsistencies in the available evidence, it is my view that on the balance of probability, the original parish application for the registration of Drabblegate Common deliberately excluded an area of land to the north of the building of No.15 Drabblegate. The precise area of that land cannot accurately be defined from that map, but I have no basis on which to assume that this is not the land consistently occupied and used by the Dumolo family as the curtilage of their property which is the subject of the present application for de-registration. Accordingly, it would seem that this land has been wrongly registered as part of the common.

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

26. It appeared to be common ground that the Dumolo family had occupied the land for which de-registration is now sought continually since before it was registered as common. One objector however stated that some commoners have '*at one time or another exerted our right of access on the land*'. Nevertheless, I have seen no evidence to suggest that any party has placed reliance on the register such that its correction as applied for would be unfair.

Other Matters

27. One objector sought to argue that even if a mistake had been made, this was not a fundamental error which should now be corrected. I cannot accept this argument, if, as I have concluded, land which was part of the curtilage of a private dwelling was wrongly registered as common land, this is in my view clearly the sort of error which can and should be corrected under Section 19 of the 2006 Act.

Conclusion

28. Having regard to these and all other matters raised at the hearing and in the written representations, and to the criteria in Section 19 of the 2006 Act, I conclude that the application should be approved as it has been shown, on the balance of probability, that a mistake was made by the commons registration authority in making the relevant entry in the register of common land.

Barney Grimshaw

INSPECTOR

APPEARANCES

For the Applicants

Mr RN Dumolo Applicant

Mr JN Dumolo Applicant

Objectors

Mr D Harper Commoner

Mr P Norton Commoner

Dr P Harvey Commoner

Ms G Wragg Commoner

Mr I Milne

Commons Registration Authority

Mr L Malyon Norfolk County Council (NCC)

Mr B Nuttall

DOCUMENTS

1. Two files of documents compiled by NCC.
2. Statement of Case of the applicants.
3. Statement of Peter Norton.
4. Statement of David and Maureen Harper.
5. Statement of Georgina Wragg and Peter Harvey.
6. Copy of correspondence between Mrs V Dumolo and Broadland District Council in February/March 1997 regarding removal of a tree.
7. Copy of Field Notes from survey under the Finance Act 1910.
8. Copy of survey made on 21 October 2019, P Norton.

Streetwise



SITE LOCATION PLAN
AREA 2 HA
SCALE 1:1250 on A4
CENTRE COORDINATES: 619843, 328017



Commons Act 2006: section 19

Application to correct the register

Unit number: CL101 (Drabblegate, Aylsham NR11 6LR) – southern boundary.

Key:



Land to be removed from the register