



Application Decision

By Martin Elliott BSc FIPROW

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

Decision date: 29 November 2019

Application Ref: COM/3219561
Broxhead Common, Bordon, Hampshire
Register Unit: CL147

Registration Authority: Hampshire County Council

- The application, dated 6 July 2017, is made under Section 19(2)(a) of the Commons Act 2006 ("the 2006 Act") to correct a mistake made by the registration authority in making or amending an entry in the register of common land.
 - The application is made by Maureen C Comber, Honorary Secretary to Broxhead Commoners Association.
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Decision: The application is refused.

Preliminary Matters

1. Under Regulation 27 of the Commons Registration (England) Regulations 2014 (the Regulations) an opportunity was given to make oral representations to an Inspector appointed to determine the application. None of the relevant parties asked to be heard and I have therefore considered this application on the basis of all the written representations before me. I have not visited the site but I am satisfied that I can make my decision without doing so.
2. The Commons Registration Authority (CRA) has taken a neutral stance in respect of the application and have referred the application to the Planning Inspectorate under Regulation 26 of the Regulations.

The Application Land

3. The application land comprises an area of 80 acres of land adjacent to Broxhead Common. The applicant states that the land was removed from the Register without the consent of the Secretary of State. It is also stated that the mistake considered to have been made in the register of common land is that the land was unlawfully fenced in 1963. No application or retrospective application for consent has been made for the retention of the fencing. In consequence it is stated that 80 acres of common land has mistakenly been removed from the register of common land.

Main Issue

4. The application has been made in accordance with the provisions of section 19(2)(a) of the 2006 Act. This section provides that a CRA may amend its register of common land to correct a mistake made by the CRA in making or amending an entry in the register.

5. The main issue is whether the entry made by the CRA in the land register for CL147 was mistaken and requires correction.
6. 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 has been made by the Commons Registration Authority in making an entry in the register

7. The application land and the surrounding common was initially registered by the CRA without application on 23 April 1968 (Entry number 1 in the Land Section). The registration was provisional. The initial registration was amended on 30 July 1973 following the resolution of objections numbered 114 and 336 (Entry 2). This registration was in consequence of a '*Notice of Final Disposal of Disputed Registration*' given by the Commons Commissioner; the date on the copy of the notice is unclear but the date has no bearing on my decision. The land known as Broxhead Common amounting to 400 acres (161.874 ha) was registered on 30 July 1973 (Entry 3).
8. Entry number 4 of 1 August 1979 indicates that the '*land registration at Entry 3 above, which was disputed, became final on the 24th. day of May 1978..., with the following modifications, namely the exclusion of the land hatched in red on the plan marked 'C' annexed to Sheet 89 of the register map.*' The land hatched red is the application land.
9. As noted above at paragraph 8 the land registration at Entry 3, which includes the application land, was disputed. On 22 July 1975 the landowner gave notice to the High Court of an appeal against the decision of the Commons Commissioner in respect of the registration. From the submissions before me it appears that Brightman J dismissed the appeal.
10. The appeal was subsequently heard in the Court of Appeal on 24 May 1978¹. The Order of the Court states that on the release by the Respondent (Ernest Connell) of all his rights over the area amounting to 80 acres (the application land) the Council should not pursue its provisional registration of the area as common land. Further, that the Respondents consent to the amendment or withdrawal by the County Council of its provisional registration pending before the Commons Commissioner of the said area so as to exclude all reference to the area on the commons register.
11. It is clear from the evidence that Entry 4 in the Land Section of the Register is putting into effect the Order of the Court of Appeal by removing the 80 acres from the land section of the commons register. The entry has been made in accordance with the Final Disposal Notice signed by the Chief Commons Commissioner dated 18 December 1978 who would be acting on the actions of Hampshire County Council to withdraw the provisional registration of the land. It is also clear from the Order that Ernest Connell released any rights on the land. Consequently there is nothing to indicate that the CRA made any mistake in removing the application land from the register; it was acting in accordance

¹ I have had regard to the full judgment as submitted with the application bundle from the CRA

- with the disposal notice of the Chief Commons Commissioner who was putting into effect the Order of the Court of Appeal.
12. It should be noted that, whilst the application land was provisionally registered, by virtue of Section 6 of the Commons Registration Act 1965 (the 1965 Act) the registration only becomes final either at the end of the period during which an appeal could be brought against the registration or when any appeal is finally disposed of. Section 7 of the 1965 Act also makes it clear that if no objections are made or any objections are withdrawn registration shall become final at the end of the period during which objections could have been made. Section 10 of the 1965 Act indicates that registration of land under the Act is conclusive except where the registration was provisional only. In this case, given the appeal against registration, the final disposal was on 18 December 1978 and, in effect, up to that date the registration remained provisional.
 13. I note the suggestion that the appeal in the Court of Appeal was dismissed but this was on the terms of settlement. The Order provides for the removal of the 80 acres from the provisional registration. This was acted upon by the Chief Commons Commissioner as identified in Entry 4. There is nothing to indicate that the decision of Chief Commons Commissioner has been challenged by way of judicial review such that the decision should be set aside.
 14. The applicant has submitted correspondence from W Bradley Trimmer & Son dated 3 December 1974 which states that the final decision from the Commons Commissioner has confirmed rights over part of the common. Further, that effectively the whole of the common has been established as a common. However, in 1974 the registration had not become final as it was subject to an outstanding appeal. The land would in effect have remained provisionally registered. Further correspondence, 1 November 1979, from Hampshire County Council also confirms the final registration following the decision of the Commons Commissioner. Appended to the correspondence is a copy of the Land Entry plan which shows Broxhead Common including the application land as being registered. Whilst the plan shows the application land, bearing in mind the background to the exclusion of the application land from the register, the correspondence does not show that a mistake had been made in the registration process.
 15. Bearing in mind the above, there is nothing to indicate that the entry in respect of CL147 was mistaken. The application land was removed in accordance with the disposal of the Chief Commons Commissioner on 18 December 1978. The applicant states that the application land was removed from the register without the consent of the Secretary of State. However, no such consent was required in the registration of land under the 1965 Act.
 16. Although the applicant states that the mistake in the register is that the land has been unlawfully fenced, without approval, this has no bearing on whether a mistake was made in making an entry in the register.

Other matters

17. The applicant and supporters of the application raise concerns in respect of the fencing of the common, ownership, the restriction of access to the land and rights of way, the recording of other areas of common land and public rights of way. Representations are also made in respect of the conduct of Hampshire County Council and the landowner, rights of common on the west side of the

common and the registration of rights of common. Reference is also made to section 194 of the Law of Property Act 1925 in respect of fencing. These are not matters relevant to my determination of the application. The relevant issue is set out at paragraph 5 above.

Conclusions

18. Having regard to these and all other matters raised in the written representations I conclude that the application should be refused.

Martin Elliott

INSPECTOR