



Application Decision

Hearing held on 28 June 2016

by **Michael R Lowe BSc (Hons)**

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

Decision date: 6 September 2016

Application Ref: COM 776

Hutton Roof Common, Cumbria

Register Unit No. CL 319

Registration Authority: Cumbria County Council

- The application, dated 17 December 2014, 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 Mrs Jenifer Stevenson and Mr Arthur Newton.
 - The application is for the correction of a mistake made by the commons registration authority in amending an entry in the register of common land.
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Decision

1. The application is approved.

Preliminary matters

2. I held a hearing at Lady Gillford's House, Petteril Bank Road, Carlisle, Cumbria on 28 June 2016. I visited the site after the hearing.
3. Representatives of Cumbria County Council were present at the hearing to assist me but did not advocate a case for or against the application.
4. Section 19(2)(a) of the 2006 Act enables the correction of a mistake made by the commons registration authority in making or amending an entry in the register of common land. Section 19(4)(b) of the 2006 Act provides that any person may apply for such an amendment. 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. Regulation 26 of the Commons Registration (England) Regulations 2014 requires the commons registration authority to refer such applications to the Planning Inspectorate for determination by it.

Reasons

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

5. In March 1982 a Commons Commissioner determined a disputed entry of land at Hutton Roof following a hearing. The Commissioner's decision, reference Nos 262/D/845 to 850 inclusive, established the boundary of Hutton Roof Common. The Commissioner removed a small part of the entry for CL319 and attached a plan at a scale of 1:2500 to show the amended boundary.

6. The Council has acknowledged that it made an error when the modified boundary of the common land was translated onto the register map, which is at a scale of 1:10,560 and that the boundary is ambiguous at that scale.
7. Having read the Commissioners decision and examined the copy of the entry on the register map it is clear to me that the commons registration authority made a mistake in amending an entry on the commons register following the commissioner's decision.

Whether, in all the circumstances, it would be unfair to correct the register by reason of reliance reasonably placed on the register by any person or for any other reason

8. In October 1988 Mr & Mrs Quinn undertook a Commons Registration Search at the time they purchased the Horseshoe Inn. Cumbria County Council has acknowledged that they gave an incorrect response to the search when they indicated that the land in question was not registered as common land.
9. Mr & Mrs Quinn erected a boundary fence on the basis of the information supplied by the Council and that has resulted in part of the common land being incorporated within the garden of Mr & Mrs Quinn's property. The Council considers that the fence has encroached upon the common land by 48m², following a survey in 2010.
10. I acknowledge that Mr & Mrs Quinn acted correctly in conducting the commons registration search and that they were not aware of the decision of the Commons Commissioner concerning the boundary of the common land.
11. I recognise that relocating the boundary fence to reflect the correct boundary of the common land would result in some cost to Mr & Mrs Quinn and the loss of some part of their garden area. I have weighed this factor against the value of retaining the correct boundary of the common, as agreed between the then owner of the Horseshoe Inn and those with the rights of common in 1982. In my view it would not be unfair to correct the commons register.

Conclusion

12. I conclude that a mistake was made by the commons registration authority such that the register should be corrected and that it would not be unfair to correct the register.

Michael R Lowe

INSPECTOR

APPEARANCES

Cumbria County Council (neutral stance)

Sveteana Bainbridge

Commons Registration Officer

Rebecca Toppin

Solicitor

Philippa Christie

Solicitor

Supporters

Arthur Newton

Applicant