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| **Application Decision** |
| **by D M Young JP BSc (Hons) MPlan MRTPI MIHE**  |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 20 September 2022** |

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| **Application Ref: COM 3289665****Hentor Warren, Willings Wall Warren, Trowlesworth Warren, Shaugh Moor, Wotter Common, The Ruts and part of Crownhill Down**Register Unit: CL190 Registration Authority: Devon County Council |
| * The application dated 30 November 2020 is made under Section 19 of the Commons Act 2006 (the 2006 Act) for consent to carry out restricted works on common land.
* The application is made on behalf of Shaugh Prior Commoners Association.
* The application seeks the correction of an alleged mistake made by the Commons Registration Authority in making an entry in the register of common land insofar as it relates to entry 27a Wotter Farm Shaugh Prior.
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Preliminary Matters

1. I held a public hearing into the application at the Wombell Centre, Plymouth on 10 August 2022. At the hearing it was agreed that a site inspection would not be necessary.
2. The application was referred to the Planning Inspectorate under Regulation 26 of the Commons Registration (England) Regulations 2014 (the Regulations) by the commons registration authority, Devon County Council (DCC), on 12 January 2022. This was because a person (Mr David Skelly of Wotter Farm) with a legal interest in the application land has objected to the proposed correction of the register.
3. The application seeks to rectify an alleged mistake which was made in the commons register for unit CL190. In making the application, Shaugh Prior Commoners Association (the applicant) rely on the Commons Commissioner’s Decision of 30 May 1977 which states:

“*I was informed that the Shaugh Commoners Association was agreeable to the grazing of 72 cattle or 360 sheep over Shaugh Moor by Mr R E Skelly and Mr R L Skelly, the applicants for the registration at Entry No.27 and that the applicants did not wish to pursue their claim to a right of turbary over this land*”” (my emphasis)

1. Entry 27a in the provisional/final register entry states:

 “*To graze: 72 cattle*

1. *Sheep (or equivalent: 5 sheep = 1 beast)*

*Over part of the land comprised in this register unit known as Shaugh Moor and CL164*”

1. On 10 August 1977 the Commissioner issued a notice under section 6(2) of the Commons Registration Act 1965 which set out that the register should be modified to read:

*To graze: 72 cattle or 360 sheep (or equivalent: 5 sheep = 1 beast) over part of the land comprised in this register unit known as Shaugh Moor and CL164 (S) (Grazing rights only).*

1. For reasons that are unclear, DCC omitted the word “or” in both the provisional register and the modified version in 1980. The applicant argues that this has led to ongoing ambiguity and therefore the application seeks to amend the register so that it reads “*72 cattle or 360 sheep*”.

**Main Issues**

1. Section 19(4) of the Commons Act 2006 (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 Regulations set out the procedures to be followed.
2. The application form confirms 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 registration authority in making or amending an entry in the register. Section 19(3) clarifies that a “mistake” can be a) a mistaken omission and b) an unclear or ambiguous description.
3. 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.
4. 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 probability.
5. In light of the above the main issue is whether the evidence submitted is sufficient to show, on a balance of probability, that a mistake was made by the commons registration authority in respect of the recorded rights for unit CL190 on its provisional and subsequent final register of common land.

Reasons

***Whether there is mistake in the Register***

1. The original Commissioner’s decision and indeed the Section 6 Notice both refer to “*72 cattle or 360 sheep*”. In my view, the omission of the word “or” from the register fundamentally changes the nature of the rights enjoyed by the objector from that envisaged by the Commissioner. 72 cattle or 360 sheep is very clearly different to what is recorded in the register which most reasonable people would interpret as 72 cattle and 360 sheep.
2. While I acknowledge that the original application was made on the basis of 72 cattle and 360 sheep, the applicant refutes the suggestion that it was agreeable to this. There is nothing in the Commissioner’s decision to suggest otherwise and indeed the Section 6 Notice make clear what was intended.
3. Adding credence to the objector’s position is the fact that it was common practice at the time to apportion one acre of grazing for every one acre of farmholding. As the land attached to the register is approximately 72 acres, this equates to 72 grazing rights i.e., 72 cattle or 360 sheep.
4. In the absence of any credible evidence to demonstrate the Commissioner made a mistake, the presumption of regularity must apply to the 1977 decision. Accordingly, the omission of the word “or” from the register must be seen as a “*mistaken omission*” and/or “*an unclear or ambiguous descriptio*n”. I am therefore satisfied that there is a mistake in the register that requires correction.

***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***

1. Having established that a mistake was made by the commons registration Authority, I must consider Section 19(5) of the 2006 Act. This directs that the mistake should not be corrected if doing so would be unfair to the person whose rights would be affected.
2. In this case, the objector has been aware since at least 1980 that his grazing rights over CL190 are limited 72 cattle or 360 sheep. I do not therefore consider it would be unfair to correct the register. Invoices issued by Dartmoor Commoners’ Council, the statutory body who manage grazing on Dartmoor, show that the objector has been invoiced for 258 grazing units (114 units at Hentor Warren and 144 at Shaugh Moor). However, the invoices were not issued by the applicant and therefore this is a private matter for the objector to resolve with Dartmoor Commoners’ Council.

**Conclusions**

1. I have found there was a mistake in relation to the recording of rights over Shaugh Moor. I also find that in the circumstances it would not be unfair to correct the register.

**Formal Decision**

1. The application is allowed.

*D. M. Young*

Inspector

**APPEARANCES**

**In support of the application**

Ms Helen Radmore Shaugh Prior Commoners Association

Mr Keith Stone Chairman of Shaugh Prior Commoners Association

**Opposing the application**

Mr Richard Bagwell Stephens Scown representing Mr David Skelley (the Objector)

**Representing the common registration authority**

Mr Paul Uren Devon County Council

**HEARING DOCUMENTS**

Dartmoor Commoners’ Council Invoices for years ending 2022 & 2009

Original Application Form received on 27 June 1968

Supreme Court Judgement *Adamson and other v Paddico Limited* and *Mrs Gill Taylor v Betterment Properties Limited* [2014] UKSC 7

The Commons Act 2006

Commissioner’s Section 6 Notice dated 10 August 1977