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| **Application Decision** |
| Hearing held on 3 June 2025 |
| **by A Behn Dip MS MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 27 June 2025** |

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| **Application Ref: COM/3353450**  **Land at Higher Venton and Chittleford Farms, Widecombe-in-the-Moor, Devon** |
| Register Unit: CL69  Registration Authority: Devon County Council |
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| * The application, dated 6 December 2023, is made under Section 19 of the Commons Act 2006 (the 2006 Act) and seeks correction of an alleged mistake made by the Commons Registration Authority (CRA) in making or amending an entry in the register of common land. * The application is made by Mrs E P Newbolt-Young.  |  | | --- | |  | |  | |

**Decisio****n:** The application is allowed.

**Preliminary matters**

1. I held a public hearing into the application at Dartmoor National Park Authority Headquarters at Bovey Tracey on Tuesday 3 June 2025. A site visit was not considered necessary. Mrs Newbolt-Young (the applicant) was represented in her absence by Tom Stratton and Mrs Margaret Young and Mr Michael Lamb (the objectors) were represented by Kate Harrington.
2. The application was referred to the Planning Inspectorate under Regulation 26 of the Commons Registration (England) Regulations 2014, by the CRA, Devon County Council, on account that a person with a legal interest in the application has objected to the proposed correction of the register.

**The Application**

1. Mrs Newbolt-Young made the application on the basis that she considered Entry 155, relating to unit CL69, on the register was incorrect. She believed that some of the rights related to land that she owned, and were not apportioned following a land exchange in the 1960’s with the late Mr Peter Hicks, which was formalised by a Deed of Exchange in 1976.
2. The OS parcels that were made over to Mrs Newbolt-Young, which she considers are subject to the apportionment of rights, are OS parcels 2175, 2176, 2178, 2121, 2122 and 2127, totalling 14.245 acres. The OS parcels made over to Mr Hicks were 912, 2169 and 2232, totalling 7.352 acres.

**Main Issues**

1. 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 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’ includes a) a mistaken omission and b) an unclear or ambiguous description, and it is immaterial for the purposes of this section whether a mistake was made before or after the commencement of this section’.
3. Section 19(5) provides that a mistake in the register may not be corrected under this section 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 (the fairness test).
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.

**Reasoning**

**Use of Form CA10**

1. It was suggested by the objectors that use of form CA10 by the applicant for the alleged error was not appropriate. The CRA, when referring the application to the Planning Inspectorate advised that they had originally received an application under Regulation 43 of the 2006 Act, however as the applicant had identified that there was a potential mistake in the commons register, the CRA could not proceed with that application until the alleged mistake had been corrected under Section 19 of the 2006 Act.
2. The application was made under S19(2)(a) as a mistake by the CRA, albeit the CA10 form would also be used for an application under S(19)(2)(b) to correct other mistakes, the only difference being a payment to the CRA for processing the application under S(19)(2)(b). The CRA have not advised that the form was completed under the wrong clause or requested payment of a fee that would suggest they disagreed with the application being made under that clause.
3. Should the questioned rights of common be found not to be severed, the amendment made to the register by the CRA in 2008, apportioning rights for Entries 154 and 155 would constitute an error, albeit an inadvertent one, that could arguably be attributable to non-verification of the accuracy of the apportionment, which was a view held by Dartmoor Commoners Council (DCC).
4. The objectors also suggested that the application was defective as it failed to include all of the land affected by the alleged severance of rights. However Entry 155 is the registration that cites those land parcels that now belong to the applicant, whose rights are in question. Should the application be allowed, this in itself would then require the amendment of Entry 154, as it would also be incorrect. I am satisfied this does not make the application defective.

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

1. It is common ground among the parties that severance of rights from land, while now not permissible under the Dartmoor Commons Act of 1985, was possible at the time of the land exchange, the objectors referring to *Bettison and another v Langton and others [2001]* in support of this premise. The essence of the dispute is whether the rights were severed from the land as part of the exchange.
2. The objectors were of the view that the register was correct in not recording the questioned rights of common against the land received by the applicant as part of the exchange. In their evidence, they stated that the late Mr Hicks had exchanged 14 acres of meadow at Higher Venton Farm to the applicant and the late Mr Reep (the applicant’s former husband) for 7 acres of fields at Lower Venton Farm in the late1960’s. They stated that this was an oral agreement and although no money exchanged hands, the objectors claimed that Mr Hicks’ consideration for the agreement was to retain the grazing rights for the 14 acres of land given over to the applicant. To qualify this, they drew attention to the formal Deed of Exchange in 1976, which made no mention of rights of common attached to the parcels of land exchanged. The objectors felt this served to show that it was the intention of Mr Hicks to retain the rights.
3. By contrast, Mrs Newbolt-Young in her statement of case, wrote that she was involved in the discussion and agreement for the said land exchange and believed ‘*that the rights of common attached to the respective parcels of land were to pass to each new owner.’*
4. At the Hearing, it was confirmed that there was no written evidence of the agreement to the severance of the rights, nor a registration of the claimed severed rights. I note from the evidence that documents were prepared by the objectors in 2024 to register the alleged historical severance of rights of common, albeit these are in draft form and it appears that the application before me was submitted prior to their completion.
5. In assessing an application for the registration of historically severed rights, the decision maker must be satisfied that the severance was lawful and that; either there is clear documentary evidence that the parties to the transaction or disposition intended that event to have the effect of severing the rights of common or; that there is evidence that the rights of common have been treated as having been severed since the transaction or disposition.
6. At the hearing, my attention was drawn to Section 62 of the Law and Property Act 1925 where it advises that a conveyance of land is deemed to include all rights and advantages associated with the land unless there is an express contrary intention in the conveyance. I consider this aligns with the criteria for assessing historically severed rights and in this matter it is clearly appropriate to have regard to that criteria.

*Clear documentary evidence of the intention of the parties to sever rights*

1. There is no specific documentation stating an agreement to severance of the grazing rights and I do not consider that the 1976 Deed of Exchange comprises clear documentary evidence of such an intention. Whilst inferences can and have been drawn either way, the document is essentially silent on the matter.
2. Subsequently, at the hearing it was confirmed that the intention of the objectors was to rely on evidence showing that the rights had been treated as severed since the exchange of lands.
3. It would seem appropriate when considering evidence of severance, to first address acceptance or acquiescence of the alleged severance of rights in gross, and to consider the evidence of actual use of those rights under the heading of reliance upon the register.

*Acceptance or acquiescence of the alleged severance of rights*

1. The applicant submitted that there were no time limits for making corrections to the register, however the objectors felt that the applicant had accepted or acquiesced in their exercise of the rights of common in gross since 1969 and without formal query for almost four decades.
2. My attention was drawn to a conveyance between the applicant and her former husband in 1978 which does not specify rights of common on the land at Lower and Higher Venton which formed the land exchange, but does on other land that was included as part of the conveyance. The objectors considered that this was in keeping with the oral agreement that there were no rights attached to the land, having been severed as part of the land exchange.
3. This document is a conveyance of various land parcels, following a divorce, including those OS parcels which were part of the 1976 Deed of Exchange. While I accept that other lands in the conveyance specify rights of common, I would expect that this document, written just two years after the 1976 Exchange, would be silent with respect to the grazing rights on the exchange land, being that the 1976 Deed of Exchange was also silent on the issue.
4. The objectors considered the fact that the severance of the rights was not registered in the 1960’s or 1970’s was not evidence that it never existed. They stated that there were no express requirements to register the severance of a right under the Commons Registration Act 1965 (CRA 1965), where that severance had occurred prior to 28 June 2005.
5. While this may be the case, Mr Hicks did make an effort to formalise the register under the CRA 1965 in 1991, following a visit from Mr Newbolt-Young, who, according to the witness statement of Betty Hicks, wanted to *‘pursue the question of rights on the land swap’*. The statement notes that Mr Hicks was upset enough to consult his solicitor and seems to suggest that this was the catalyst for the application he made in 1991 to apportion the rights. On the 1991 application, under the heading ‘Nature of the change in the right of common’, Mr Hicks wrote *‘no apportionment was made in a Deed of Exchange dated 18 May 1976’* and then listed the OS parcels exchanged in the Deed.
6. This application was returned to Mr Hicks however, with the County Solicitor noting that it was for Mr Hicks, not the Council, *‘to say how you consider the registered rights have been apportioned between the differently owned parts of the above property. For my part I shall have to give the other owners Notice of your proposed register amendment together with affording them the opportunity of raising objection should they consider this necessary.’* The statement of Betty Hicks then notes that Mr Hicks decided *‘it was best to leave it alone as nothing had changed in his mind.’*
7. The view of the objectors was that this evidence indicated that the rights of common were severed, and they further noted that no other landowners objected at that time. However my reading of the document leads to a different interpretation. My understanding of the letter from the County Solicitor is that the application was unclear as to how rights should be apportioned and that once clarity on the apportionment was received by the County Solicitor, the other owners of the land to which the rights were registered would be given notice of the proposal, to afford them an opportunity to object. As the apportionment remained unclarified and the application progressed no further, it appears unlikely that a Notice would have been issued to the landowner, affording them the opportunity to object. No evidence of such a Notice has been provided.
8. From the late 1980’s to the early 2000’s the applicant, on occasion, rented grass keep from the objectors and also paid to access the objectors land to graze livestock. It was noted by the objectors that no concerns were raised by the applicant about the questioned rights of common during these times, albeit it is acknowledged that the grass keep did not include any reference to common rights. While I accept that these may have been opportunities to express any concerns regarding the grazing rights for the exchanged land, such business arrangements were not aimed at addressing the question of grazing rights. However, although the occasions above were not used to raise the question of grazing rights, the issue was raised during this period, in 1991, resulting in the abandoned application by Mr Hicks to apportion the rights.
9. Relating to this time period, the objectors also drew attention to an agreement in the year 2000 which related to Widecombe Commons as part of the Dartmoor Environmentally Sensitive Area (ESA). The agreement was used to allocate grazing and compensation and was entered into and signed by local farmers, including the applicant. It was pointed out that there were no objections from the applicant to the quantity of grazing rights notated in the ESA for Mr Hicks. The ESA listed rights as a total for each grazier and was concerned with stocking levels on a number of common register units. Again, I do not consider that this overtly communicated to the applicant that the rights of common associated with the land exchange in 1976 were severed.
10. In March 2000, Entry 75 for CL69 was split and entered on the Commons Register as Entry 133 and Entry 134. This was a result of Mr Hicks selling some land to a Mr Whitley in 1994. Entry 134 notated the rights attached to the land sold and the land was identified in blue on the supplemental plan to that application. Entry 133 notated Mr Hicks as the owner of the remaining land and the remaining rights. The supplemental plan identified the remaining land parcels in red, which still included the land that had been exchanged in 1976.
11. The applicant felt that the apportionment of rights in this land sale from 1994 indicated a pattern showing that Mr Hicks did pass on rights. Conversely, the objectors considered that this land sale, which clearly included the transfer of rights of common to graze, indicated that Mr Hicks was unambiguous in his intention of not passing over the rights for the land exchanged to the applicant. Upon examination of this document it would appear that this application to amend the register, six years after the sale, was not made by Mr Hicks, but by the land purchaser Mr Whitley. The Dartmoor Commons Act of 1985 would also have prevented severance of any rights as part of a conveyance at this point in time. Accordingly, I do not consider this document can be considered to support the stance of either party.
12. In 2009, the Commons Register was amended again, splitting Entry 133, which was then entered on the register as Entries 154 and 155. Entry 154 passed some land and rights from Mr Hicks to his daughter Mrs Rogers. The supplemental plan attached to the application delineated the lands passed over in red, which did not contain the exchanged lands. Entry 155 for the remaining land, which the supplemental plan identified in green, was retained in the name of Mr Hicks and included the lands that were exchanged to the applicant.
13. The objectors submitted that a notice of this commons register amendment was provided to the Parish Council, the Chairman of which was Mr Newbolt-Young, the applicant’s husband. They noted that no objections were received to the register amendment.
14. Whilst I accept that the amendment to the register in 2009 came before the applicant’s husband, I do not consider that sight of the document in such a forum, or in Mr Newbolt-Young’s capacity of Chair, can be considered as overtly showing the historical grazing rights from the 1976 exchange being severed. Whilst the objectors suggested that Mr Newbolt-Young would have been aware of the bearing of the register amendment to the questioned grazing rights, and possibly not told his wife, I consider that this is speculative. It is equally possible that Mr Newbolt-Young was unaware that the document had a bearing on the rights ascertaining to the lands exchanged in 1976.
15. Aligning to the register amendments discussed above, the objectors suggested that the applicant would have received notices pertaining to the amendments. However as pointed out at the Hearing, when applications to amend the register are made, the CRA are under no obligation to check ownership of the land, and could assume that the information is correct, and that the applicant owns the land for the rights being transferred. As a result the applicant felt that the Notice procedure placed him in an unfair position, as she would not have received Notice of the transfer proposals.
16. In 2013, a letter from Tom Stratton to the objectors, again highlighted *‘the matter of grazing rights’* noting that ‘Rod had raised this with Paul Uren at County Hall some time ago’. Mr Stratton wrote that *‘it is…. simply something that needs to be looked at closely and addressed to a conclusion either way.’* Whilst the objectors in their statement of case states that ‘*prior to Mr Stratton’s involvement there had been no questioning of the rights,’* this conflicts with the known 1991 visit to Mr Hicks from Mr Newbolt-Young concerning the same matter.
17. DCC sent a letter to the applicant in 2018 following an exercise they had undertaken relating to land owned or tenanted, being cross checked with the common rights detailed on the Council’s live register. They had identified, in relation to CL69, that the rights included in Entry 155 (originating from Entry 133) were incorrect, as no apportionment of the rights had been undertaken to reflect the lands exchanged by the 1976 Deed.
18. However the objectors were of the view that DCC recognised the severance of the rights of common in gross and had, for many years, accepted annual payments from the objectors that included payments for the rights of common that aligned to the land exchanged. While I accept that DCC, in a letter to the objectors in June 2022, recognised that the objectors continued to pay the annual contribution *‘at the pre 2018’* amount, I do not accept that they recognised the severance in gross. In the same letter, DCC stated *‘we cannot accept that the common rights were retained by Mr Hicks on the land he gave up,’* and referred to the abandoned application by Mr Hicks in 1991 to apportion the rights. Whilst they accepted that there was no requirement to notify the CRA of any change of ownership in land, they pointed out that there was provision to do so under the 2006 Act.

*Conclusions on acceptance or acquiescence of the alleged severance of rights*

1. The evidence in this case is balanced and the views of both parties are well-reasoned and by nature, both subjective and understandably greatly emotive. I also accept that individual documents are open to more than one interpretation, and this is certainly the case for several pieces of evidence before me.
2. What is clear in this case, is that there is no documentary evidence expressly retaining the rights of common to Mr Hicks as part of the land exchange and therefore this case must rely upon evidence that the rights of common have been treated as severed.
3. Evidence of severance appears to centre on the applicant not challenging the use of the rights of common formally during the many interactions with the objectors over the time that has elapsed since the exchange of lands in the late 1960’s. However the opportunities cited where the rights of common associated with the land exchange could have been raised and queried were business arrangements that were not geared specifically to asserting the rights in question for the land exchanged.
4. Documents referencing rights of common that objectors consider may have been seen by the applicant or her late husband were concerned with general rights of common as a whole, with the exception of the 2009 transfer of rights, which would have been viewed by the applicant’s husband in a capacity of Parish Chair. I do not however, consider this an overt assertion of the ownership of rights, as it was presented to him not as a landowner, but through the forum of a Parish Council.
5. With the exception of the 2009 transfer of rights, it would seem that the other amendments to the register that were undertaken prior to this may not have been seen by the applicant, as procedurally there was no obligation to check land ownership, and the CRA would have assumed that the information provided on the application forms was correct.
6. Albeit not formal challenges, the ownership of the rights of common were questioned in 1990/1991, leading to the aborted application by Mr Hicks. The rights were further questioned in August 2013 in a letter from Mr Stratton to the objectors, and then again in 2018 and 2022 by DCC.
7. The evidence before me gives the impression that there has been knowledge on both sides (albeit not necessarily the same person) of unresolved questions of ownership of the grazing rights for at least thirty years prior to the application. Although there was a sense of passivity on both sides in formally redressing the issue, I am not satisfied that the alleged severance of rights was accepted or acquiesced to.

**Whether any party places or has placed reliance upon the register such that the correction of the entry would, in all circumstances be unfair**

1. In their statement of case, the objectors considered that they have placed reasonable reliance on the claimed severance in gross, referring to *Gadsden & Cousins on Commons and Greens 3rd Ed 4:37-38*. They considered that it would be unconscionable to go back on an agreement that has been relied upon for decades.
2. I consider that reliance on the register must evidence a dependency on the use of the alleged severed rights, albeit I accept that such evidence is hard to quantify. Diary notes and witness statements clearly show that the lands, which were informally exchanged in the late 1960’s, were being worked on by the respective parties, however there is no specific mention of livestock grazing during that period.
3. While exercise of the grazing rights associated with the exchange lands may well have been fully utilised by the objectors in recent years as attested to by the witness statement of Tom Havill, it would seem that the rights of common as generally held by Mr Hicks were not necessarily utilised consistently. There were several years where not all of the rights attributable to Mr Hicks were used, as indicated by the ESA agreement for 2000-2010, where Mr Hicks was listed as a non-grazier. Witness statements also indicated that land was at times retained for grass keep or let out for grazing to other farmers, sometimes even to the applicant from the late 1980’s to the early 2000’s.
4. Such use does not suggest that the alleged severed rights of common for the exchange land were indispensable and invariably relied upon. In consequence there is insufficient evidence of such reliance on those rights in question to the extent that the correction would be unfair in all circumstances.
5. The objectors stated that on the basis of the oral agreement, time and money had been invested in relation to the questioned rights, including purchase of livestock in 2012, as well as the payment of annual common rights contributions for which the questioned rights for the exchange lands, form a part. The applicant in response, considered that they had also lost income from the Basic Payment Scheme and Government Agri-Environment Schemes linked to common rights, together with the loss of capacity that the questioned rights provide to graze. While the objector in their comments on the late evidence, commented that the matter in question is not one of financial consideration, it is clear that both parties would suffer a degree of detriment, by the loss of the rights of common in question.

**Other matters**

1. It was stated in evidence and at the Hearing that, in addition to the questioned rights of common relating to the land exchanged to the applicant, the rights of common that pertained to the land given over to the objectors were also exercised by the objectors. Whilst these rights are not before me, it would follow that the outcome of this decision with regard to the severance or otherwise of the rights of common on the land exchanged to the applicant, would equally apply to the status of those rights on the land exchanged to Mr Hicks.
2. There are several references within evidence including but not exclusive to, the development of and equitableness or otherwise of the 1976 land exchange, associated grant funding processes undertaken prior to formal exchange, alleged conflicts of interest and questions of ethics, as well as other matters that are not the focus of this decision. Whilst I fully understand that these issues are important to those that raise them, they are not within my remit or power to address. My role is solely to ascertain whether a mistake has been made on the Commons Register with regard to the rights of common in question and whether it is fair to correct the register should an error have been found to be made.

**Conclusions**

1. There is no documentary evidence of a severance of the rights of common in gross and I do not consider that the evidence is sufficient to show acceptance or acquiescence by the applicant, as questions surrounding the ownership of these grazing rights is threaded through the evidence from 1991 onwards, with neither party fully resolving the matter.
2. I further consider that the evidence of reliance upon the register by the objectors with regard to the questioned grazing rights, is insufficient to show that correction of the register would be unfair in all circumstances.
3. I therefore conclude that there is an error within the Commons Register that requires correction and that in the circumstances it would not be unfair to correct the entries affected by the error.
4. The application is allowed and the quantities of grazing rights in Entries for 154 and 155 under the register unit of CL69 should be amended as below. Whilst the objectors at Paragraph 7 of their statement of case arrive at different calculations for Entry 155, I believe there may be an error in the sums. My calculations determined figures for the grazing rights which correspond to the calculations made by DCC in their letter of 22 June 2022.

* **Entry 154 To graze: 5 bullocks or ponies**

**21 sheep**

* **Entry 155 To graze: 13 bullocks or ponies**

**50 sheep**

* The supplemental map to these register entries should also be amended to **remove** those land parcels outlined in green that represent the **OS parcels 2175, 2176, 2178, 2121, 2122 and 2127.**

Mrs A Behn

INSPECTOR

**Appearances**

**For the applicant**

T Stratton

A Stratton

**For the objector**

K Harrington

M Rogers

H Dellar

J Hess

**For the Commons Registration Authority**

P Uren

M Ellis

**Interested Persons**

S Young

H Hicks

**Documents Submitted at the Hearing**

Statement by objector in response to late evidence submitted by the applicant