



Application Decision

Hearing held on 20 November 2018

Site visit held on 19 November 2018

By Martin Elliott BSc FIPROW

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

Decision date: 20 December 2018

Application Ref: COM/3163771

The Green, Ramsgill

Register Unit: CL525

Registration Authority: North Yorkshire County Council

- The application, dated 24 July 2015, is made under Schedule 2(7) of the Commons Act 2006 ("the 2006 Act") to remove other land wrongly registered as common land.
- The application is made by Mr J Briggs.

Decision: The application is refused.

Preliminary Matters

1. I held a hearing at County Hall, Northallerton on 20 November 2018. I carried out an unaccompanied site visit of the application land on the afternoon of 19 November. I did not carry out a further site visit following the close of the hearing as there were no issues which required me to do so. None of the parties required me to revisit the site, accompanied or unaccompanied. The Registration Authority took a neutral stance in respect of the application

Main Issue

2. Paragraph 7(2) of Schedule 2 to the 2006 Act provides that any person may apply to the Commons Registration Authority to remove land from the register of common land where:
 - (a) the land was provisionally registered as common land under section 4 of the 1965 Act¹;
 - (b) the provisional registration of the land as common land was not referred to a Commons Commissioner under section 5 of the 1965 Act;
 - (c) the provisional registration became final; and
 - (d) immediately before its provisional registration the land was not any of the following:
 - (i) land subject to rights of common;
 - (ii) waste land of the manor;
 - (iii) a town or village green within the meaning of the 1965 Act as originally enacted; or
 - (iv) land of a description specified in section 11 of the Inclosure Act 1845.
3. 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

¹ The Commons Registration Act 1965

sufficient evidence to merit granting the application. The burden of proof is the normal civil standard, namely, the balance of probabilities.

4. The main issue is whether the applicant has adduced sufficient evidence to show that the application land was registered as common land in error.
5. Although section 10 of the 1965 Act provides that registration of land as common land or a town or village green is conclusive as to the matters registered, the 2006 Act provides for the register to be amended subject to certain requirements being met; in this case those set out at paragraph 2 above.
6. It is not disputed that the requirements set out in paragraphs 2 (a), (b) and (c) have been met. Although the question of the ownership of the application land was considered by a Commons Commissioner under the provisions of section 8 of the 1965 Act this does not preclude consideration of the application. I am satisfied that these requirements have been met and I have not considered them further. The land was provisionally registered on 22 January 1970.

Reasons

Whether immediately before its provisional registration the land was not any of the following:

Land subject to rights of common

7. There are no registered rights of common over the application land.

Waste land of the Manor

8. Waste land of the manor is open, uncultivated and unoccupied land of the manor other than the demesne lands of the manor. The applicant has not considered any manorial or inclosure award records. In the absence of any consideration of such records it is not possible to conclude that the land was not waste land of the manor.
9. I note that the land forms part of the freehold of Green Farm, that it was maintained by the farm and that photographs from 1958 and circa 1970 show that the land was maintained. However, it does not necessarily follow from this that the land at the date of the provisional registration was not waste land of the manor.

A town or village green within the meaning of the 1965 Act as originally enacted

10. The applicant asserts that the land has never been used for lawful sports and pastimes. The applicant acknowledged that the local inclosure award has not been inspected and it is therefore not possible to determine the status of the land following inclosure. Further, it is not possible to establish that the award did not allot the land for the recreation of the inhabitants.
11. The correspondence provided by the applicant, from a Mr Robson, resident, from the age of two in Bouthwaite from 1936, indicates that he was former chairman of the Parish Council which he joined at the age of 21 and served for 35 years. He is also a church warden at St Mary's Church Ramsgill. His earliest memories are of a previous owner Mr Moor mowing the land for a crop of hay and chasing off children and car owners attempting to park on the land. The land was sold to the grandfather of Mr Briggs (the applicant) in 1952 and

in later years the land was mown with a lawn mower. Mr Robson did not recall regular playing by children but he recalled Mr Briggs' father telling people to get off the green. However, no dates are provided as to when any challenges took place or the particular circumstances.

12. Statements in opposition to the application suggest that the land has always been a public space where children played games, locals walked their dogs and people took picnics. Indications are that Mr Briggs' father never had an issue with locals using the land. Similar points are made in the representations to the application. Whilst some of this evidence is lacking in detail in respect of dates some of that evidence will relate to a time prior to the provisional registration of the land. The evidence gives a picture of longstanding use of the land for lawful sports and pastimes.
13. Mrs Ralston said at the hearing that she had lived in Ramsgill since 1959 and that prior to 1970 everyone walked over the land, she referred to people sitting on the land and taking picnics. I note the suggestion of the applicant that Mrs Ralston is mistaken as to the cutting of the grass by her late husband and the giving of the land to the village by Mr Briggs. However, the evidence in respect of the use of the land is consistent with that of other objections/representations to the application. It should also be noted that the evidence from the objectors that the land was used also conflicts with that of Mr Robson who did not see regular use of the land. Nevertheless he does not say that the land was not used.
14. I am aware that the land was used by the Briggs family for a meeting place for private shooting parties. However, that does not preclude the use of the land for lawful sports and pastimes.
15. Although there is a conflict of evidence I consider that it leans more to the use of the land for lawful sports and pastimes such as to indicate that the land was a town or village green within the meaning of the 1965 Act. The applicant has not adduced sufficient evidence which shows, on the balance of probabilities, that the land was not a town or village green.
16. The conveyances of 1925 and 1952 include a covenant requiring that part of plot 388 'which is now unenclosed from the Public Highway' to be preserved as open space for ever. The term 'open space' might support an inference that the land was a town or village green. However, in the absence of further information as to the meaning of 'open space' in this context it is difficult to give this term any weight in support of the land being a town or village green.
17. The applicant referred to the granting of written authority for the land to be used as a staging post for various charity walks. However, this does not mean that the land was a town or village green at the time of the provisional registration. In any event the use of the land as a staging post exceeds any right for exercise, recreation or lawful sports and pastimes. The letter from the Rotary Club seeks permission to site a check point on the land for which permission would rightly be sought.
18. The applicant indicates that there is no mention of the use of the land for sport or other activities in the Conservation Area appraisal documents of 2009 and 1995. The only reference relates to visual qualities and nothing more. However, it should be noted that the documents were produced to protect, restore and enhance the character of the Ramsgill conservation area. It is

therefore unsurprising that there is no mention of the use of the application land although the land is referred to as a green. In any event such documents would be unlikely to provide evidence of the use of the land prior to its provisional registration.

19. I note the assertion that the similar greens of the Yorke Arms were found not to be a town or village green. However, whilst the land was not subsequently registered following the application by the Ramblers Association the land was removed following an objection which had been agreed. There is nothing to indicate that the status of the land was given any consideration. It does not necessarily follow that the land was not considered to be a town or village green or that the application land was also not a town or village green. In any event the land subject to the current application of Mr Briggs was subsequently registered as common land. The evidence in respect of the Yorke Arms land does suggest that there was a level of scrutiny in respect of the common land in the village. Notwithstanding the above the application needs to be considered on the basis of the criteria set out in paragraph 2 above. The fact that the Yorke Arms land was not registered is not relevant to my consideration.

Land of a description specified in section 11 of the inclosure Act of 1845

20. The applicant stated that he had not examined any local inclosure award relevant to the application land. In the absence of any inclosure award evidence it is not possible to conclude that the land was not land specified in section 11 of the Inclosure Act of 1845.

Conclusions on the evidence

21. As noted at paragraph 3 the onus of proving the case in support of the correction of the register rests with the person making the application. It is for the applicant to adduce sufficient evidence to merit granting the application. In the absence of sufficient evidence the application should be refused. I have concluded above that, in the absence of inclosure award and other evidence, it is not possible to conclude that the land was not waste land of the manor or land specified in section 11 of the Inclosure Act 1845. In any event the evidence suggests that the land was used for lawful sports and pastimes and that in consequence the land is a town and village green within the meaning of the 1965 Act. The applicant has failed to adduce sufficient evidence to demonstrate that the land is not a town or village green and the application should be refused.

Other matters

22. The applicant makes the point that the land, as registered common land, is not access land under the provisions of the Countryside and Rights of Way Act 2000 (the 2000 Act) as the land is 'Excepted Land'. However, the restrictions on access in this context are only relevant to access under the 2000 Act and have no bearing on other provisions. In any event this has no bearing on the determination of the application. The relevant criteria are set out above at paragraph 2.
23. Representations raise issues in respect of landownership, the parking of vehicles, the acquisition of highway rights over the land and the future of the land in the event of deregistration. The issue was also raised as to whether the land should now be recorded as a town or village green. These are not matters

for my consideration and I revert to my comments above as to the relevant criteria.

Conclusions

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

Martin Elliott

INSPECTOR

APPEARANCES

For North Yorkshire County Council

Ms J Applegarth

Common Land and Village Green Officer

The applicant

Mr J Briggs

In opposition to the application:

Ms N Candlin

Of Counsel (on behalf of Mrs Weinfield, Mr Turner, Mrs Ralston and Upper Nidderdale Parish Council)

Mr W Bates

McCormicks Solicitors

Mrs Ralston

Local resident

Professor M Wells

Local resident

Professor J Tarrant

Local resident

Mr P Wright

Local resident

Documents handed in at the hearing

- 1 Registration documents in respect of CL 525