

**Commons Act 2006
Section 19 (2) (a)**

Application to correct the register – mistake made by the registration authority.

NOTICE OF DETERMINATION

Application Number: CA10/50

Notice is hereby given that the Planning Inspectorate has considered an application to correct a mistake in the commons register, made by the commons registration authority, when registering common land register unit CL180 Quarry, Great Corby. The Applicant claims that a section of land outlined in red on the corresponding Notice of Application (“the Application Land”) was incorrectly registered as part of the common when the land was provisionally registered on 8th August 1969 under section 4 of the Commons Registration Act 1965. That provisional registration, being undisputed, subsequently became final on 1st August 1972.

Decision

The Planning Inspectorate determined to refuse the application to correct the register, and therefore the commons register will remain unaltered, with the Application Land remaining registered as part of commons register unit CL180 Quarry, Great Corby.

Reasons

The Planning Inspectorate made its decision, on the grounds that, although there is no direct evidence to explain why the former Cumberland County Council included the old playground area within CL180 when it had been omitted from the land claimed by the original applicant in 1968, it was (and still is) the owner of that land. It would therefore have been in a position to decide, from its own records, that the area was common land and should be included. On the balance of probabilities, the Planning Inspectorate found it to be plausible that no mistake was made in relation to the recording of CL180 as alleged in the application.

The full reasons for the decision are stated in the Planning Inspectorate Application Decision Notice which will be made available at: <https://www.gov.uk/guidance/2019-common-land-notices-and-decisions>

Changes to the register

No changes are required.

Signed:



Allan Harty – Assistant Director Environment & Enterprise
Dated: 26th April 2022



Application Decision

Hearing held on 12 April 2022

by **Sue M Arnott** FIPROW

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

Decision date: 25 April 2022

Application Ref: COM/3277613

Land known as The Quarry, Great Corby, Cumbria

Register Unit No.: CL180

Registration Authority: Cumbria County Council

- The application, dated 24 September 2020, is made under Section 19(4)(b), and for the purposes of Section 19(2)(a), of the Commons Act 2006.
 - The application is made by the Head Teacher of Great Corby Primary School.
 - The application seeks the correction of an alleged mistake made by the commons registration authority in making or amending an entry in the register of common land.
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Preliminary Matters

1. I held a public hearing into the application in the Education Room at Carlisle Archive Centre, Lady Gillford's House, Petheril Bank Road in Carlisle on 12 April 2022 having visited the site unaccompanied the previous afternoon. At the close of the hearing the consensus view was that there was no need for a further inspection of the application land.
 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, Cumbria County Council (CCC), on 28 May 2021. This was for two reasons.
 3. Firstly, CCC is the freehold owner of part of the application land and therefore has an interest in the outcome. Consequently, there is unlikely to be confidence in its ability to determine the application impartially. In view of this, its representatives appeared at the hearing in a neutral capacity.
 4. Secondly, persons with a legal interest in the application land have objected to the removal of land from the register. Land Registry title CU263679 lists the registered proprietor of the part of the application land immediately surrounding the school as the Official Custodian for Charities on behalf of the Great Corby Education Foundation. Mr R C Armstrong also claims ownership of part of the application land and has previously made statutory declarations to that effect although his name is not listed with the Land Registry.
 5. On this latter point, I made clear at the hearing that whilst ownership is recorded in the register of common land, it is not my role here to determine ownership of any land where that is disputed.
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6. A total of 64 duly-made representations were submitted in relation to the application and a further 7 were received by CCC that were not considered to have been duly-made. I have considered all submissions in reaching my decision on this application.

The Application Land

7. The application relates to a part of the parcel of common land registered as CL180. This is an extensive area of mostly woodland which extends along the north side of Clints Road in Great Corby and then northwards to the Newcastle and Carlisle railway line. The most northerly section is little used but the part beside Clints Road within an old quarry area is a much-valued resource for local people. In particular it is said to be a place for children to experience nature and the natural environment.
8. The application site lies at the western end of this common land unit. It encompasses two separate land parcels although relatively recent changes to the land surface, the installation of playground equipment and a new school building on the common now make it difficult to identify the two previously distinct areas.
9. Nearest Corby Beck was the old school playground, a rectangular area originally enclosed by stone walls and iron railings and, until recently, covered with tarmac. This stood separately from the main school building and what was known as the adjoining 'headmaster's garden', this being separated from the common by a stone wall.
10. At the hearing Mr Evans submitted that there was never a gap between the headmaster's garden and the old playground. However, I am quite satisfied that old Ordnance Survey (OS) maps confirm there to have been ample space for people to pass. The OS 1:2500 map dating from the 1970s (and earlier editions) show there was a clear way leading past the school and continuing eastwards into the woodland. Indeed, Mrs Armstrong recalled members of her family taking farm vehicles across a ford close to the present pedestrian access gate, between two old stone gate posts, between the school buildings and old playground then continuing eastwards over the common to access their land.
11. Although it is difficult to interpret the definitive map of public rights of way with confidence because of the limitations of its scale, a public footpath descends from Clints Lane some way to the east of the application site, crossing Corby Beck via a footbridge. This is recorded as entering the application land from the east then turning to the north-east and terminating below steps which lead up towards Quarry House. The continuation of this path was legally stopped up in 1971 although the remainder over the common still exists.
12. At the hearing it was submitted that local people have always reached this footpath by walking between the school buildings and the old playground. Further, it was suggested that this path may potentially form a claim for addition to the definitive map since it must have been recognised as an alternative to the path closed in 1971 in order to justify the extinguishment.
13. This is clearly an issue for the school governors, concerned about the safety of children on the premises during school hours, and also for CCC in its role as highway and surveying authority. However, as I explained at the hearing, it is not a matter that is relevant to my determination of this application although it does tend

to confirm that passage between the old playground and the school has always been possible.

14. The precise boundary of the land that is alleged to have been wrongly recorded was shown on a plan submitted on 6 October 2020, after the initial application. (A copy is attached in Annex 1.)
15. A comparison with the common land register suggests to me that the application land omits part of the registered common immediately to the south east of the school buildings. Nevertheless, I understand the intention of the application is to remove from the register all the common land around the school and its current playground area as far eastwards as the fence which is aligned with the eastern boundary wall of the old playground.

The Statutory Requirements

16. 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.
17. 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.
18. 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.
19. An application must be made in accordance with the Regulations. Paragraph 16 of those Regulations requires that an application must:
 - (a) be made in writing on a form provided by the registration authority to which the application is made; and
 - (b) be signed by, or by a representative of, every applicant who is an individual, and by the secretary or some other duly authorised officer of every applicant which is a body corporate or an unincorporated association.
20. In addition, paragraph 11 of Schedule 4 to the Regulations requires that an application made under Section 19(4)(b) must include:
 - (a) a statement of the purpose of the application; namely the mistake in the register that has been identified by the applicant and the nature of the correction being sought;
 - (b) the number of the register unit to which the application relates;
 - (c) evidence of the mistake or other matter in the register in respect of which the application seeks correction; and
 - (d) a description of the amendment sought in the register of common land.

21. 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.

The Main Issues

22. 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 when, on the basis of an application in 1968 from Wetheral Parish Council, it recorded CL180 on its provisional register of common land and subsequently its final register of common land.

Reasons for the decision

23. The application complies with the requirements of paragraph 16 of the Regulations and was accompanied by all the information required by paragraph 11 of Schedule 4.
24. It was supported by three plans: a copy of the map submitted with the original application for registration submitted by Mr T V Steel on behalf of Wetheral Parish Council in May 1968 (identified here as Plan A). In addition, an enlargement of this map was submitted with the area of the old playground highlighted in pink (Plan B).
25. Following the process required under the Commons Registration Act 1965 (the 1965 Act), on receipt of the application in 1968, the registration authority (in this case the former Cumberland County Council) drew the claimed common land onto a provisional map (Plan C) which was issued on 8 August 1969. Details from the provisional map (no 172) were subsequently transferred to the final registration map (Plan D) issued on 1 August 1972 and written details recorded in the accompanying register. A copy of the relevant sheet of this final map (no 57) was submitted with the application along with a current plan prepared by CCC for reference only.
26. A copy of Plan C has been submitted by CCC so that the sequence of three maps A, C and D can be compared. All are on different map bases, Plan A using the OS 25" to 1 mile mapping, Plan D being based on a 6" to 1 mile OS sheet published in 1970 and Plan C on an earlier edition of the same sheet (NY45SE).

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

27. The applicant argues that, at first registration, the area shown on the 1968 application plan submitted by Mr Steel (Plan A) omitted the pink area (shown on Plan B), this being the old playground. However, the provisional map (Plan C) failed to exclude this area.
28. In addition, Mr Evans submitted that the error was not confined to the old playground area (the pink land); in his view the mistake extended to the whole of the land that is now the subject of the current application.
29. I will deal with this submission first as I can find no basis at all for reaching such a conclusion. The plan submitted by Mr Steel marked the claimed common land with a thick green line along the *inside* of its boundary. Following this convention, the green line is shown around the outside of the old playground (and therefore on the

inside of the boundary to CL180). It is clear to me that this is the reason that there might appear to be a question over whether there was a gap between the headmaster's garden and the old playground. It is simply because of the use of thick lines to mark the boundaries which appear to meet at one pinch point. As I have already noted, old OS maps provide evidence showing there has always been access between these two features.

30. On the Parish Council's 1968 map the boundary of the common is clearly shown to include land to the south-west of the school and to follow the eastern edge of the school buildings. In fact, it included an area described by Mr Paul Armstrong as the land on which the school canteen was built sometime in the 1960s. (This lies on the north-eastern side of the main school building.)
31. I cannot agree with Mr Evans. It seems clear that Mr Steel did not omit from his map any part of CL180 other than the old playground area. In fact, he included 'the canteen area' that was later omitted from the provisional map although that is not the main issue here. There seems to me no basis for any argument that alleges a mistake was made in this process aside from the two discrepancies I have noted between Mr Steel's map and the registration authority's provisional map.
32. I have studied very closely parcel CL180 on the provisional map. There is no doubt that it does not exclude the old playground area in the same way as was shown by the Parish Council. In switching from the 25" to one mile scale map used by Mr Steel to the 6" to one mile base used for the provisional map, it is easy to understand how the intricacies of the boundary around the school buildings are lost. Even with a magnifying glass it is not easy to be sure that the canteen land has been omitted but on balance I would say that it has. Nevertheless, even at this scale there is no hint that the old playground land has been excluded.
33. At the hearing Mr Weatherill explained that it was not the usual practice of Cumberland County Council to make use of inset maps in its register as occurs in some other authorities. Thus, there is no such information available to assist in this respect. Neither, it seems, is there any written material that might shed further light on the process. Mr Astle had tried to locate relevant documents from the archived material deposited by Wetheral Parish Council and Mr Weatherill had looked for records held by CCC but neither search had revealed anything of relevance.
34. Thus there is no evidence to explain why the registration authority did not exclude the old playground area from CL180.
35. Mr Evans argued as an officer of Wetheral Parish Council, Mr Steel had been known to be reliable and meticulous in his attention to detail. Therefore, it should be assumed that he correctly excluded the old playground from the common land parcel he claimed.
36. In response, Mr Astle suggested that Mr Steel may have submitted a revised plan which included the pink land although, on balance, I consider that unlikely since a revised plan would probably have been substituted in the application record that was subsequently retained in the council's (minimal) records.
37. Mr Astle further highlighted the provisions in the legislation for the registration authority to act on other relevant information when deciding what should be recorded. Section 4(2)(a) of the 1965 Act gave a commons registration authority

power to “register any land as common land notwithstanding that no application for that registration has been made”.

38. Evidence shows that the old playground land was conveyed to “The School Board of the Parish of Wetheral” on 23 September 1896. The conveyance between PJC Howard and the School Board described the subject area as “common land”. Cumberland County Council was the successor in title to the School Board; its legal department would have been aware of the 1896 conveyance from its title deeds with the reference to common land. It is therefore entirely possible that the old playground was registered as common land on the basis of the authority’s own records.
39. Although historical evidence provided by objectors was not challenged at the hearing, the tithe map and award for the “Township of Corby and Warwick Bridge in the Parish of Wetheral” (1840-1843) described the land as “waste land”, referring to waste land of a manor, confirming this to be a type of common land which falls to be registered.
40. In the absence of any correspondence from the late 1960s or minutes of relevant meetings, it is impossible to know with any certainty whether Cumberland County Council intentionally included the old playground on its provisional map and, later, on its final map. On a balance of probability, and on the basis of all the documents provided by the applicant and other background material, I am not satisfied that the available evidence shows a mistake was made in recording CL180.
41. I will add, with some hesitation, that the same conclusion applies also to ‘the canteen land’. This was claimed by the Parish Council as common land but not included in the register by the registration authority. Although it is entirely possible this was a mistake, on balance I consider the evidence insufficient to conclude that it was.
42. In summary, on the basis of the information available, I do not find sufficient evidence to show the commons registration authority mistakenly depicted on the register map the part of CL180 that is the subject of this application.

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

43. No arguments were submitted in relation to this issue.

Other matters

44. For the applicant, Mr Evans argued strongly that the concerns of the school in relation to child safety should be taken into consideration. He referred to the United Nations Convention on the Rights of the Child, an International Human Rights Treaty that grants all children and young people a comprehensive set of rights. Article 3 states that the best interests of the child should be the primary consideration of legal and administrative authorities in all actions concerning them. Article 19 includes the requirement to protect children from all forms of harm. Article 12 addresses the need for all children to be able to express their views freely in matters affecting them.

45. Although I fully understand the motivation of the school in making this application, the legislation under which it was made to de-register part of CL180 concerns solely matters of fact and evidence which relate to the legal test set out in Section 19(2)(a) of the 2006 Act: was a mistake made by the commons registration authority during the registration process?
46. The procedures prescribed by the Regulations in connection with this application have been followed, thereby allowing any person (adult or child) to submit views on the requested de-registration. There is no scope for consideration of any other interests; the merits of de-registration from the school's perspective are not relevant, nor is the desire of local people to retain unrestricted access to the common. Suggestions were made at the hearing as to how an acceptable solution to concerns around safeguarding children outside the school might be found but it is not for me to comment on other approaches to the issue.

Conclusion

47. There is no direct evidence available to explain why the former Cumberland County Council included the old playground area within CL180 when it had been omitted from the land claimed by Wetheral Parish Council in 1968. However, the County Council was (and still is) the owner of that land and would have been in a position to decide, from its own records, that the area was common land and therefore it should be included. On a balance of probability, I find that to be a plausible explanation and therefore that no mistake was made in relation to the recording of CL180 as alleged in the application.

Formal Decision

48. The application is refused.

Sue Arnott

INSPECTOR

APPEARANCES

In support of the application

Mr I Evans School Governor, representing the applicant: the Headteacher,
Great Corby Primary School
Mrs V Evans

Opposing the application

Mrs A M Armstrong Also representing Mr R C Armstrong & Mr T R Armstrong
Mr Paul Armstrong Also representing Mr Peter Armstrong
Mr I L Astle
Mr D Dixon

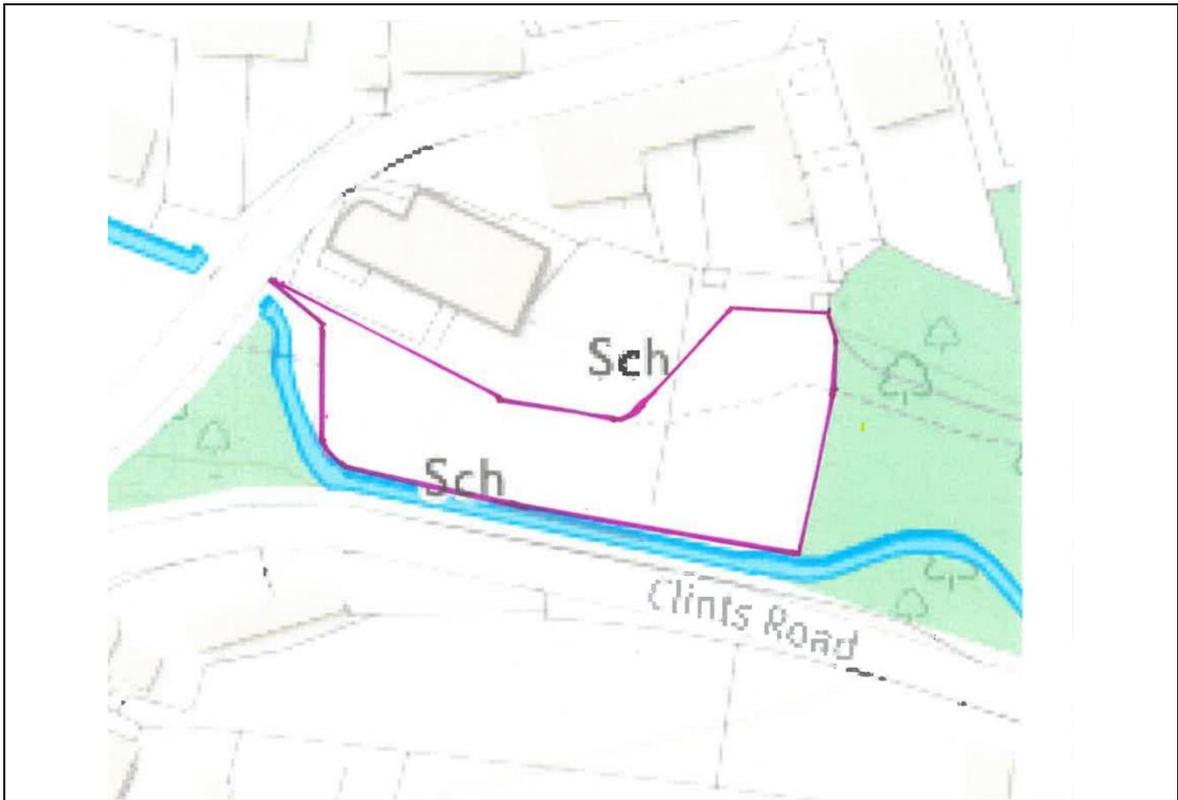
Representing the commons registration authority

Mr J Weatherill Commons Officer, Cumbria County Council
Mr M Brennan Lead officer for Historic Environment and Commons,
Cumbria County Council

DOCUMENTS

1. Bundle of documents provided by Cumbria County Council including the application and supporting documents, background registration documents and documents relating to the processing of the application
2. Statement on behalf of the applicant from Mr I Evans
3. Statement of Mr I Astle including Annex 1- a conveyance dated 23 September 1896 of common land and Annex 2 – an extract from the Wetheral Tithe Map 1840-1843
4. Statement of Mrs A Armstrong including statement of Mr R C Armstrong
5. Statement of Mr D (& Mrs P) Dixon (with enclosures)
6. Statement of Mr Paul Armstrong
7. Statement of Mr Peter Armstrong
8. Copy of the plans attached to the Common Commissioner's Decision in 1980 provided by Mrs Armstrong

ANNEX 1



APPLICATION PLAN



LOCATION PLAN