

**COMMONS ACT 2006 section 19**

**The Commons Registration (England) Regulations 2014 No.3038**

**Application to correct the register on the basis of a mistake by the Commons**

**Registration Authority in registering land as common in Eaton, Norwich**

**CL 1 (NOR)**

**Final Decision**

Section 19 of the Commons Act 2006 allows applications to correct certain errors in the registers. Section 19(2) sets out the purposes for which a correction can be made.

Section 19 reads as follows:-

*19. Correction*

*(1) A commons registration authority may amend its register of common land or town or village greens for any purpose referred to in subsection (2)*

*(2) Those purposes are -*

*(a) correcting a mistake made by the commons registration authority in making or amending an entry in the register;*

*(b) correcting any other mistake, where the amendment would not affect -*

*(i) the extent of any land registered as common land or as a town or village green: or*

*(ii) what can be done by virtue of a right of common*

*(c) removing a duplicate entry from the register;*

*(d) updating the details of any name or address referred to in an entry*

*(e) updating any entry in the register relating to land registered as common land or as a town or village green to take account of accretion or diluvion*

*(3) References in this section to a mistake include -*

*(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.*

*(4) An amendment may be made by a commons registration authority*

*(a) on its own initiative (NB this power is not yet in force in Norfolk)*

*(b) on the application of any person.*

*(5) A mistake in a 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*

Taking this test into account, was a mistake made by the Registration Authority (CRA), as stated by Mr and Mrs Bradshaw in their application for the correction of the register under section 19? Was the extent of the registration of the land as shown on Mr Tusting's application plan faithfully reproduced by the CRA when it compiled the Common Land Registers for Eaton Common Unit CL1 (NOR)?

The case for the correction is based on the following grounds:

- The land registered at the Land Registry under Title Number NK397546 is wrongly shown as being part of Eaton Common registered under entry CL1.
- The original application made to register CL1 did not include this particular parcel of land.

Taking the points above as one, the CRA advises as follows;

Eaton Common was the first CL unit in Norfolk to be considered by the Norwich County Borough Council, (now the Norwich City Council) which was then the Commons Registration Authority (CRA) for Norwich. It is thought the discretionary power provided by the Commons Registration Act 1965 to CRAs to register land 'without application' was used to resolve a dilemma thrown up by two separate applications (one for the registration of the land as common and the other for the registration of rights of common) for land at Eaton. Each of these applications recorded different areas of common land on their accompanying maps.

A copy of the common land map showing the extent of land registered as common under Unit CL 1 (NOR) as marked with a green verge line is attached as Appendix 1.

The section of the register known as the 'Land section' in which the land is described is attached as Appendix 1a, the section recording 'Ownership' is attached as Appendix 1b and the relevant extract from the section in which the 'Rights of Common' are registered is attached as Appendix 1c. Note that these sheets are marked as being 'Edition number 2' and that they all bear the note at the foot of the sheets that 'This Edition was prepared on the basis of documentation passed to the Norfolk County Council following Local Government Re-organisation'

The 'provisional' registration of the land took place on the 12 October 1967. At entry number 1 on the Land sheet it is recorded that the land was 'Registered by the registration authority without application'. The registration of the land was not disputed and so, on the 1 October 1970, the registration of the land was made 'final'.

#### The two separate land applications – Mr L G Richards and Mr JB Tusting

Within the case file an Ordnance Survey plan circa 1956/7 was discovered on which is outlined in red 'Eaton Common'. The plan (copy enclosed as part of Appendix 2) is marked 'A' and on the back bears the following wording, 'This is the exhibit marked "A" referred to in the statutory declaration of L G Richards made this March 20<sup>th</sup> 1967 before me' - signed by Jessie R Griffiths, Justice of the Peace for the City of Norwich.

There is no matching application form CR7, which is the prescribed form used by applicants for the registration of land as common. Clearly, this exhibit OS plan has become detached from what was no doubt the first application for registration of the land as common. The declaration would have been part of the application and as with all land applications, is cross referenced to the preceding sections of the form in a way which implies that these sections were completed at the same time or at an earlier date ("I am the person who has signed the foregoing application"). This suggests that the missing application form was completed on or before 20 March 1967 and may well have been Application No.1. The plan excludes the application land but includes land to the north and west and also includes the track to the Railway Keepers Cottage to the east of the application land.

Mr L G Richards was a County Borough Councillor and as such would have had an understandable interest in local issues. Certainly, he is on record as attending the first hearing into the ownership of Eaton Common, which was held on 22 June 1973.

Mr Tusting - There is also a second, documented application for registration of the land as common with the papers. This was made by a Mr J B Tusting on 29 March 1968 (see Appendix 2), some 6 months after the provisional registration. Mr Tusting's application form was accepted by the CRA as 'Application no 3' and did not include the land which is the subject of this application. It did not also include the land to the north and west or the track to the Railway Keepers Cottage.

However, prior to the second application (Tusting) being submitted, the CRA, in August 1967, received an application for the registration of three common rights by a Miss Fitt. This was accepted by the CRA as 'Application no 2' on 3 August 1967. The land coloured pink/red on the supplemental plan attached to the application denotes the land over which Miss Fitt claimed rights of common. This includes the section 19 application land.

I am grateful to Mr Steve Byrne for advising that the one anomaly on Miss Fitt's application form for the registration of her common rights is the official stamp dated 12 October 1967 on the supplemental map. The significance of this date stamp is that 12 October 1967 was the date on which CL1 (NOR) was provisionally registered as common land. Mr Byrne considers it likely that this supplemental map was used as part of the registration process and that in turn this map was used to reconstruct the form.

#### Referral to the Commons Commissioner (Appendix 2)

The Commons Commissioners considered Eaton Common on three occasions. The first of those was in 1973 when there was a hearing into the ownership of the common. The Decision letter makes reference to the attendance and the provision of evidence by Mr L G Richards. At paragraph 4 it is stated that Mr Richards' application is 'noted' in the land section of the register, though the date given for the Richards application is '6 April 1937', which is obviously a mistake.

Secondly, in 1990 the CRA was in correspondence with the Clerk of the Commons Commissioners, Miss Winifred George, about the scheduled hearing of the objection (under the Commons Registration (Rectification of Registers) Act 1989) made by the British Railways Board to the registration of 'Railway Keepers' cottage and garden curtilage. Mr John Richardson of the CRA, in his letter of 9 November 1990, refers to Mr Tusting's application for the registration of the common. Miss George, in her reply of 16

November 1990 states that 'Mr Tusting's name is not recorded on the copy of the register recently supplied by you to this office. I note however that in the old copy of the register kept on an old file, he is recorded as a noted applicant'.

The application for the removal of the cottage and garden was successful and a copy of the Chief Commons Commissioners decision letter of 31 January 1991 is attached. As noted by Mr Richardson, Miss Fitt's application map did not acknowledge the presence of the 'Railway Keepers' cottage and garden curtilage.

Thirdly, in 1995 the second hearing into ownership was held. OS parcels 7118 and 7920, the application land, were discussed by agents of the then owners of the land who stated that rents had been received in respect of this land for at least 60 years from a succession of tenants. They added that the land was enclosed and separated from what they knew to be the common by a hedge and fence. It had been administered as private enclosed grazing land. The Direction to the CRA was issued on 1 April 1996.

In 2010, the Office of the Commons Commissioner was abolished. The commons work was transferred to the Planning Inspectorate. Unfortunately it does not appear that all of the archive records were similarly passed across as enquiries have revealed that the Planning Inspectorate does not hold records relating to this Council's previous correspondence with the Commons Commissioner and in fact doubts whether they still exist. This is unfortunate as ideally it would have been preferable to have a copy of the original Land section (Edition No.1 prepared by the City Council). This would then have provided a proper timeline for the various land section entries.

This then sets the scene for the registration of the land and it is clear from all of the comments and research above that Mr Tusting's application did not result in the registration of the land at Eaton as Common Land. The land had in fact already been registered by the CRA 'without application', some months before his application was received.

This application has been made under section 19(2) of the Commons Act 2006. The provisions cover errors of transcription or transposition made by CRAs in making or amending an entry in the register. The Explanatory Notes to the 2006 Act make it clear that this is all it covers.

We know that Mr Richards likely made an application and it is again likely that there may have been some doubt as to the extent of the common land to be registered, hence the decision to use the discretionary power contained within the Commons Registration Act 1965 for CRAs to register land without application. The application made by Mr Tusting was not received by the CRA until 6 months after the land had been provisionally registered. The Register had already been compiled by the time the Tusting application had been received. On that basis it is not possible to justify a correction under section 19, on the grounds that the CRA incorrectly recorded the extent of the land detailed on that application map on the Definitive Common Land Map.

The application has not therefore been granted



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