

**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 and buildings at Carpenters, Norwich  
Road, Mulbarton as common land – Mulbarton Common, CL 46**

**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*

Following consultations and investigations the CRA issued a draft decision, granting the application in part, in 2016. The applicants, in accordance with the regulations, were provided with an opportunity to be heard. The hearing was held before Mr David Johnson of nplaw at County Hall in February 2017. It was agreed, as a result of the discussions which took place, that the CRA would undertake an examination of the additional material produced by Mr and Mrs Parker at the hearing and carry out a further mapping overlay exercise of the archive maps, including the 1891 Indenture plan supplied by the applicants at the hearing.

#### Findings of the examination of the additional material.

The chronology of events supplied by the applicants was very helpful in providing a time line. The Indenture of 1891 recorded the sale of an additional piece of land at the southern end of the plot, the southern-most boundary of which, had been recorded as a straight line. The applicants view was that it was likely this additional parcel was not fenced off from the rest of the common. The question of why the extent of this additional parcel was not recorded on the Ordnance Survey (O.S.) of 1905 was considered, by the applicant, to be because the O.S. cartographers repeated information from the 1886 O.S. rather than undertaking a fresh survey. On the 1886 and 1905 O.S. a building was recorded as meeting the southern boundary line, which would support the fact that the additional parcel was not then enclosed. It is known that on occasions, O.S. did not always undertake fresh surveys as a matter of course. O.S. only record physical features on the ground.

The applicant, in the chronology, states that the O.S. of 1886 and 1905 reflect the southern boundary with a '*slightly concave line*' (my emphasis). The original application

plan used by the applicant for the registration of the land as common, was an O.S. plan dating from circa 1956 which also shows a concave or upward curved line at this point.

While I have sympathy for the applicants' situation I have to keep in mind that any decision has to be capable of defence under section 19 of the Commons Act 2006.

DEFRA's own Guidance to Commons Registration Authorities (NCC is a 1965 Authority) reads as follows;

#### *Section 19 corrections*

*Section 19 allows for applications and proposals to correct certain types of mistake in the registers of common land and town and village greens.*

#### *1965 authorities*

*1965 authorities can only correct the registers if the registration authority made a mistake when it made or amended an entry in the register - for example, if a registration authority recorded the boundary of a common in a way that didn't match the way it was shown in the application; read Section 19(2)(a). But if the authority recorded all the information in an application then it doesn't qualify as a local authority's mistake*

#### *When you can't make Section 19 corrections*

*You can't correct mistakes if it would be unfair to. For example, someone may have bought land thinking it wasn't a common or a green because it wasn't in the register. But the land turns out to be a common or a green that your registration authority left out of the register by mistake. You must balance the needs of those who own the land with those who want to correct the register.*

Transcript - the Indenture describes the property as “ **All that** cottage or tenement with the stable cart shed yard garden and orchard thereto belonging **And also all that** Carpenters Shop Storeroom cupboard sawpit and yard thereto belonging and used therewith All which said hereditaments and premises are situate and being in the parish of Mulbarton in the County of Norfolk and are stated to contain according to the Tithe Commissioners seventy five roods and four perches but by a survey made thereof contain one rood and thirty eight perches As the same are now in the occupation of the said Alfred Banham and his under tenant and are more particularly delineated and described on the plan drawn in the margin of these presents and shown edged with the colour yellow which said premises (with others).....”

Examination and comparison of archive maps - (see appendix 1) - the 1891 Indenture map was firstly compared against the CRA's polygon map (which map is an interpretation of the Commons Registration Definitive Map) so that it could be seen how the plot featured on the Indenture plan (shown by a yellow outline) compared to the extent of the common shown in green on the polygon map.

The Indenture map of 1891 was difficult to compare with the current O.S. and so the decision was made to overlay the 1882 County Series map with the current O.S. map. The reason why this decision was made was because the 1882 County Series O.S. map was published close in time to the Indenture map and was considered to provide more of an insight into the correct points to link with the O.S. The result of this comparison between the 1882 O.S. map with the current O.S. map is attached as appendix 3. It shows several points which match, for example building points 2, 4, 5, 6, 7 and points 1, 3, 8 – the corners of land boundaries.

The next step was then to find the points on the Indenture map which could be seen to link with the current O.S. plan. Only three points were in fact found to link without distorting the image. Unfortunately, none of the other points established from overlaying the 1882 O.S. plan with the current O.S. map matched, which was considered to be due in part to the fact that there are very few points of reference on the Indenture map. However, such measurements as are contained on the Indenture map were then added. Point number 1 on the Indenture map was found to be the top north-west point of the building, point number 2 was another building point which aligned with the other building point 2 on the 1882 map with point number 3 on the Indenture map appearing to be the same point as point number 1 on the 1882 O.S. map. This then is how the Indenture map can be shown to compare with the current O.S. map and also with the polygon map.

The next examination was of the 1905 O.S. map which was compared with the current O.S. map (titled 1905 drawn overlay). This revealed that the Indenture map and the current O.S. map had earlier been incorrectly plotted due to point number 3 on the Indenture map being referenced in the wrong place. Looking at point number one on the 1882 map and the 1905 map point number 3 on the Indenture map is not correct, the corner point further north should be at this point as shown by the overlay (Indenture map overlaid with the current O.S.). Point number 2 had previously been plotted on the Indenture plan further north but, following further examination, was found to have been

incorrectly plotted. The line from point 2 follows north eastwards and this same angle can be seen on the 1882 O.S. and the 1905 O.S. with both of these comparisons (with the current O.S. map) showing point 2 at the point shown (on Indenture map overlaid with the current O.S.) This then lends further support to the contention that the plan showing the Indenture map overlaid with the current O.S. is accurate. In addition, point number 4 meets at the corner of the building. This is only slightly different to the 1882 O.S. and the 1905 O.S. which show this same point slightly further north.

The plan attached as appendix 2 show a comparison of the Indenture map with the current OS. There is also a plan containing the polygon map data.

The next part of this exercise was to plot the findings onto the draft decision plan, taking into account, as much as possible, the line shown on the original application plan of 1967 for the registration of the land as common. The original application plan is on an O.S. plan of circa 1956 on a scale of 1:10,560 or 6 inches to the mile. The original application plan shows the land to be registered by a red line. In the vicinity of 'Carpenters' the southern boundary line is shown as following the property boundary which in turn is recorded with an upward curve and which meets, at that point, a building (which has since been demolished)

### Conclusion

Mr and Mrs Parkers chronology was helpful in setting the scene as to how the current position was reached. However, the basic question to be answered, as set out by the DEFRA guidance, is whether a mistake was made by the CRA because it recorded the boundary of the common in a way that did not match the way it was shown in the application.

The extent of the registered title to 'Carpenters' is not in itself in dispute. The fact that an old O.S. map was used by the applicant (which did not record the alterations to physical features such as fencing of the additional land) is unfortunate. That however does not mean that a mistake was made by the CRA when it transferred the extent of land shown on the original applicant's plan as common to the Commons Registration Map. There was no duty on the CRA to 'look behind' the application to see whether the applicant had checked the extent of the landholding before requesting registration as common.

The mapping comparison exercise has revealed that the draft decision plan was incorrect in that it identified too much of the common land for de-registration along the southern curtilage of 'Carpenters'. Had the applicants, Mr and Mrs Parker, not exercised their right to be heard and produced additional evidence, the CRA would have de-registered too great an extent of the common land in this area.

The application for the correction of the register under section 19 of the Commons Act 2006 by Mr and Mrs Parker of 'Carpenters', Norwich Road, Mulbarton , NR14 8JN dated 14 February 2016 for the property known as 'Carpenters' is granted as detailed under point 1 below and rejected as detailed in point 2 below;

- 1) in respect of the mistaken inclusion as common of the building, which now forms the kitchen and the sections of curtilage on the northern, eastern, south eastern, western and south western boundaries of the property, as indicated by black cross hatching on the attached draft revised plan, the application is granted.
- 2) In respect of the part of the application for de-registration of the land on the southern boundary of the property, as shown by black hatching on the draft revised plan, the application is rejected.

The land, cross hatched in black on the attached revised draft decision plan, will be removed from the Common Land Map and Registers under section 19 of the Commons Act 2006 in respect of Unit CL46, Mulbarton, Norfolk.



Abdus Choudhury,

Practice Director,

Nplaw

Norfolk County Council

Dated 1 June 2018

