

**COMMONS ACT 2006: SECTION 19 - CORRECTION TO THE COMMONS
REGISTER CL 190, APPLICATION BY MR & MS RADMORE**

Report of the County Solicitor

Please note that the following recommendation is subject to consideration and determination by the Committee before taking effect.

Recommendation: It is recommended that the register of CL 190 entry number 88 not be altered.

1. Summary

Devon County Council is the Commons Registration Authority (CRA) for Devon (excluding Torbay Council and Plymouth City Council's areas) and is responsible for maintaining the Register of Common Land, originally under the Commons Registration Act 1965 ("the 1965 Act") and more recently under the Commons Act 2006 ("the 2006 Act").

The Council received an application from Mr & Mrs A R Radmore (the "Applicants") under Section 19 of the 2006 Act to correct a mistake in the register of CL 190 entry number 88.

Section 19 (2) of the 2006 Act allows an applicant to make an application to correct a mistake in the commons register made by the CRA.

2. Background

The Applicants claim that an administrative error has been made in the Register of Common Land, in the register of Common Land Unit CL 190, entry number 88, which relates to grazing rights for the benefit of a property known as Baccamore.

Between 1967-1970 people who considered they were entitled to rights of common could apply to the CRA to provisionally register those rights under the 1965 Act. If there were objections to the provisional registration the matter was referred to the Commons Commissioner for determination. The entry which is the subject of this current application is one which was determined by the Commons Commissioner.

The current Applicants state that the Commons Commissioner, Mr G D Squibb, was informed that the applicant for registration of entry number 88 desired that the registration should be restricted to that part of CL190 which is known as Crownhill Down. According to the Applicants this was in accordance with the rights which were conveyed with Baccamore, the property benefiting from the registration. No objection was made to this and Mr Squibb's decision of 30 May 1977 confirmed the registration with the appropriate modification that it only related to Crownhill Down.

The Register of Common Land records these rights against the whole of CL190 excluding Crownhill Down. This entry was made as a result of a note dated 22 July 1977 in Mr Squibb's decision letter, which is initialled "GDS".

A further decision was made by the Commons Commission two weeks after 30 May 1977 that Crownhill Down was private property and not common land.

The current Applicants suggest that Mr Squibb did not initial the amendment to the decision of 30 May 1977 himself as they contend it to be different handwriting. They believe that a member of the clerical staff was instructed to amend the decision dated 30 May 1977 to reflect that Crownhill Down was no longer common land.

The Council has received one objection to this application from Mr Wreford Brown of Luscombe Maye LLP on behalf of the current owners of Baccamore which can be summarised as: -

- On 22 July 1977 the Commissioner made a correction to the decision dated 30 May 1977. After having been informed by the applicants at the time, that the application for registration at entry number 88 should be restricted by the exclusion of Crownhill Down.
- The Commissioners' intention in re-issuing the decision notice with the correction addendum dated 22 July 1977 was to confirm that for entry number 88 the rights do extend over the whole of CL 190, with the exclusion of Crownhill Down which is private land. This contention is supported by the modification that took place and dated 6 November 1980 in the Register of Common Land.
- Correspondence between Devon County Council and the National Trust (the owner of Crownhill Down) show that they believe the manuscript amendment to be legitimate
- It is considered to be unfair for the Council to accept the application as no mistake has been made.

Mr R H Hicks of Robert H Hicks & Co responded to the objections on behalf of the Applicants, which can be summarised as:-

- If the correction to the decision dated 30 May 1977 is correct then the initial application would have been a "chapter of errors". The Applicants do not believe that Mr Squibb as the Commons Commissioner would have made such errors.
- There is no disadvantage to the Objectors in amending the Commons Register as they do not believe owners or occupiers of Baccamore have exercised the claimed rights of common since 1965
- The successors to the original applicants have a right of common Headon Down (CL 115) and the Applicants have a right of common on CL 190.
- Headon Down (CL115) is the nearest common to Baccamore; CL190 is in a different parish.

3. Conclusion

The Officer responsible for maintaining the Register of Common Land at the time would had no reason to believe that it was not Mr Squibb who corrected and initialled his decision dated 30 May 1977. From the information provided by Mr Wreford Brown of Luscombe Maye LLP and that held by the CRA, it appears that the Register of Common Land had been correctly updated by Devon County Council as CRA.

Robert H Hicks & Co acting on behalf of Mr & Mrs Radmore accept that their comments to the objection are brief but would ask the Committee to bear in mind the evidence provided in the application.

4. Financial Considerations

There are no implications.

5. Sustainability Considerations

There are no implications

6. Carbon Impact Considerations

There are no implications

7. Equality Considerations

There are no implications

8. Legal Considerations

The implications/consequences of the recommendation have been taken into account in the preparing of the report.

9. Risk Management Considerations

There are no implications.

10. Reasons for Recommendation/Alternate Options Considered

The Officer who was responsible for maintaining the Register of Common Land at the time had no reason to believe that Mr Squibb had not corrected and initialled his decision dated 30 May 1977. Therefore, it would appear that the Register had been correctly updated.

Jan Shadbolt

ELECTORAL DIVISION: BICKLEIGH & WEMBURY

Local Government Act 1972: List of Background Papers

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Background Paper Date File
May 2010 to date Ref.CA0094
Form CA10
S19(2) Application