CA10/26 – Application to Correct Unit VG104 of the Register of Village Greens – School Green, Netherwasdale.

1.0 Executive Summary

1.1 Cumbria County Council is the registration authority for Common Land and Town and Village Greens under the Commons Act 2006.

1.2 An application has been received from Julius Piers Manduell, Matthewman David Manduell, Sir John Manduell & Lady Renna Manduell to correct unit No. VG104 of the register of Village Greens – School Green, Netherwasdale.

1.3 The purpose of this report is to request Members to make a decision as to whether the application should be granted and a correction made to the Council’s register of village greens.

2.0 Policy Position, Budgetary and Equality Implications, and Links to Council Plan

2.1 The relevant corporate theme is the creation and protection of a high quality environment for all.

2.2 This matter is a decision-making process of a quasi-judicial nature. There should be no policy or political consideration given and any potential financial implication should be ignored.

3.0 Recommendation

3.1 It is recommended that the Committee accepts the application and corrects the Register of Village Greens for the reasons contained within this report and on the specific ground that Cumbria County Council as Commons Registration Authority made a mistake when producing the first edition of register map under the Commons Registration Act 1965.
4.0 BACKGROUND

The Application:

4.1 On 17th January 2017 the Council, as registration authority for Common Land and Town and Village Greens, received an application on Form CA10 (“the Application”) under Section 19(2)(a) of the Commons Act 2006 (“the 2006 Act”) from Julius Piers Manduell, Matthewman David Manduell, Sir John Manduell & Lady Renna Manduell (“the Applicants”) for the correction of register unit VG104 School Green, Netherwasdale in relation to the land shown outlined in red on the plan attached at Appendix 1 (hereafter called “the Application Land”).

4.2 A copy of the Application is attached to the report at Appendix 2.

4.3 The School Green, Netherwasdale was provisionally registered as a village green on 12th June 1970 under Section 4 of the Commons Registration Act 1965 pursuant to application no. 1632 made by J. S. Whinerey, the chairman of Netherwasdale Parish Meeting, on 17th October 1969 (“the 1969 Application”). A copy of the 1969 Application including a map showing the original application land is attached at Appendix 3.

4.4 Following a Commons Commissioner’s decision dated 18th March 1982 (Appendix 4) the provisional registration became final on 17th August 1982 and the land became registration unit VG104

4.5 An extract from the first edition register map showing the extent of registration unit VG104 is attached at Appendix 5.

4.6 An extract from the second edition register map (the current legal map record) showing the extent of registration unit VG104 is attached at Appendix 6.

4.7 For clarity a map showing the Application Land in relation to the registered village green is attached at Appendix 7.

4.8 The Applicants claim that the information contained in the map submitted by J. S. Whinerey with the 1969 Application was transcribed inaccurately onto the first edition of the register map for VG104 (and subsequently transferred to the second edition register map), in that the Application Land was included within the boundary of that Village Green. The Applicants request that the Application Land be removed from register unit VG104.

4.9 The following supporting evidence was submitted by the Applicants:

- Copy of the 1969 Application
- Copy of a plan produced by Hough & Tullett

4.10 The Application was deemed to be duly made and on 3rd February 2017, a notice of application was advertised on Cumbria County Council’s website, displayed prominently on the site of the Application Land and was also sent to all relevant parties in accordance with Schedule 7 of the Commons
Registration (England) Regulations 2014 (“the 2014 Regulations”). Anyone wishing to object to the Application had until 17th March 2017 to do so in writing.

4.11 No objections were received.

4.12 The Law:

4.13 Part 1 of the 2006 Act was implemented in Cumbria on 15th December 2014 and allows applications to be made to amend the Register of Common Land and Town or Village Greens.

4.14 The Application is made under Section 19 (2) (a) of the 2006 Act which states:

“19 Correction

(1) A commons registration authority may amend its register of common land and 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.”

The application of the law to the facts and evidence of the Application:

4.15 The application complies with the formal requirements as to form and content as stipulated in the 2014 Regulations.

4.16 The Officer has considered the 1969 Application, the legal register maps, and other supporting documents and agrees with the Applicants’ assertion that the Application Land was included within the boundary of VG104 by virtue of a mistake made by the registration authority.

4.17 Section 19 (5) states:

“A mistake in the register may not be corrected in 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.”

4.18 The Officer has established that there are no rights of common registered on VG104.

4.19 Notwithstanding the matters set out at 4.11 above, no objections or comments have been made to the Registration Authority from anyone with a legal interest in the land.

4.20 In view of the above, the Officer does not consider it to be unfair to any person to make the requested correction to the register.
4.21 The Officer, therefore, concludes that on the balance of probabilities the Application Land is not part of VG104 and should not have been recorded on the register map.

5.0 Legal Implications

5.1 The Council has a statutory duty to keep a register of Common Land and since the implementation of Part 1 of the 2006 Act, has the power to amend the register. The Council’s Constitution at Part 2G 2.1) f) i) delegates this responsibility to the Development Control and Regulation Committee.

5.2 In considering the Application, Members must consider all of the evidence available to them, and must be satisfied that the evidence shows that each aspect of the statutory conditions set out at Section 19 (2) (a) of the 2006 Act have been met. The burden of proof in this regard is firmly upon the Applicant to provide the required evidence. The standard of proof to be applied is the usual civil standard “on the balance of probabilities”, i.e. it must be more likely than not.

5.3 The role of this Committee is to reach its own determination on the matters of fact and law arising as a result of the Application. It is for Members to determine the Application fairly, putting aside any considerations of the desirability of the land being registered as Common Land or being put to other use.

5.4 Although the findings of the Officer Recommendations are for the Committee to proceed with determination and acceptance of the Application, the Committee is not bound to follow the Recommendation; providing that in reaching its decision it applies the correct legal principles and duly considers the evidence. Therefore Members are free to accept or reject any of the Recommendations in the report. If the members reject the Officer findings and decide either not to determine the Application or to reject the Application and keep the Application Land registered as Village Green, the Committee should set out their reasons at the meeting.

5.5 There is no right of appeal against a Committee decision. The route for any challenges would be via judicial review in the High Court, where the issue would be whether the Committee had misdirected itself in law. Should a judicial review application be successful, the Council would be obliged to re-determine the Application, a successful judicial review application would not of itself determine that the Application Land was or was not Village Green.

5.6 There are no further legal considerations, all other legal considerations, issues and implications have been addressed within the detail of the report.

6.0 Options

6.1 The Committee may accept or reject the Recommendation in whole or in part.
6.2 If the Recommendation is accepted the Registration Authority will give effect to the determination by amending register unit VG104 and the register map to confirm the removal of the Application Land from the register in accordance with the 2014 Regulations.

6.3 If the Recommendation is rejected the Application Land will remain registered as village green.

6.4 Members should note that the decision of the Committee in relation to an application to correct the common land or village green register is a legal decision and is not a matter of policy or discretion.

7.0 Conclusion

7.1 The Officer is of the opinion that the Application has been validly made. The evidence submitted by the Applicants and the Officer's own research support the claim that an error was made by the registration authority. Under Section 19 (2) (a) of the 2006 Act this error can be corrected.

7.2 No objections were received and the Officer is of the opinion that de-registration of the Application Land as village green will not be unfair to any person.

7.3 The Officer recommends that this Committee resolves that the Register of Village Greens be corrected and the Application Land be removed from register unit VG104.

Jason Weatherill
Commons Officer
10th May 2017

APPENDICES

Appendix 1 - Map of the Application Land
Appendix 2 – Application CA10/26
Appendix 3 – 1969 Application
Appendix 4 – Commons Commissioner’s Decision
Appendix 5 – First Edition Register map extract for VG104
Appendix 6 – Second Edition Register map extract for VG104
Appendix 7 – Map of Application Land at 1:1500 scale
IMPLICATIONS

| Staffing:    | None |
| Financial:   | There would be cost implications in the event of an application for judicial review, however the Council is the registration authority and therefore has a statutory duty to decide applications. |
| Property:    | None |
| Electoral Division(s): | Gosforth |
| Human Rights: | The Council as registration authority has to make a decision in accordance with the law and in particular with the provisions of the 2006 Act, given these legal criteria a decision must reflect the legislation despite any other rights of individuals. |

PREVIOUS RELEVANT COUNCIL OR EXECUTIVE DECISIONS

No previous relevant decisions

CONSIDERATION BY OVERVIEW AND SCRUTINY

Not considered by Overview and Scrutiny

BACKGROUND PAPERS

Commons Act 2006
Commons Registration (England) Regulations 2014
Common Land: Guidance to Commons Registration Authorities and Applicants 2015.

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