

# **DEVELOPMENT CONTROL AND REGULATION COMMITTEE**

**Meeting date: 13<sup>th</sup> August 2019**

**From: Acting Executive Director – Economy and Infrastructure**

## ***CA10/41 – APPLICATION TO CORRECT UNIT CL495 OF THE REGISTER OF COMMON LAND – KITCHIN’S GROUND, THE HILL, MILLOM.***

### ***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 Jaqueline Sayer to correct unit No. CL495 of the register of common land – Kitchin’s Ground, The Hill, Millom.***
- 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 common land.***

### ***2.0 POLICY POSITION, BUDGETARY AND EQUALITY IMPLICATIONS, AND LINKS TO COUNCIL PLAN***

- 2.1 The relevant corporate theme is that people in Cumbria are healthy and safe.***
- 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 common land register for the reasons contained within this report and on the specific grounds that Cumbria County Council as Commons Registration Authority made a mistake when producing the register map under the Commons Registration Act 1965 by including the land subject to this application within the boundary of CL495 Kitchin’s Ground.***

## 4.0 BACKGROUND

### The Application:

- 4.1 On 5<sup>th</sup> February 2019 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 Jaqueline Sayer (“the Applicant”) for the correction of register unit CL495 Kitchin’s Ground in relation to the land shown coloured 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 Kitchin’s Ground was provisionally registered as common land on 29<sup>th</sup> October 1970 under Section 4 of the Commons Registration Act 1965 pursuant to application no. 2171 made by Millom Parish Council on 25<sup>th</sup> June 1968 (“the 1968 Application”). The provisional registration became final on 1<sup>st</sup> August 1972 and the land became registration unit CL495. A copy of the 1968 Application is attached at **Appendix 3**.
- 4.4 The Applicant claims that the information contained in the map submitted by Millom Parish Council with the 1968 Application was transcribed inaccurately onto the first edition of the register map for CL495 (and subsequently transferred to the second edition register map), in that the Application Land was included within the boundary of that common. The Applicant requests that the Application Land be removed from register unit CL495.
- 4.5 The following supporting evidence was submitted by the Applicant:
  - Copy of the second edition register map for CL495.
  - Copy of the 1968 Application.

The following document was added by the registration authority:

- Copy of the first edition register map for CL495.

Copies of the first and the second editions register maps are attached to this report at **Appendix 4**.

- 4.6 On 29<sup>th</sup> March 2019 the Application was deemed to have been duly made and 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 13<sup>th</sup> May 2019 to do so in writing.
- 4.7 No objections were received.
- 4.8 The Law:

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

4.10 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:

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

4.12 I have considered the Application and examined 1968 Application and the first and second editions of the register map. I agree with the Applicant's assertion that the Application Land was included within the boundary of CL495 by virtue of a mistake made by the registration authority.

4.13 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.”*

4.14 There are no rights of common registered on CL495 and therefore no commoners will be affected by this correction.

4.15 No objections or comments have been made to the Registration Authority from anyone with a legal interest in the land.

4.16 In view of the above, I do not consider it to be unfair to any person to make the requested correction to the register.

## **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 Schedule 2 Paragraph 6 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 not to determine the Application, the Committee should set out its reasons at the meeting.
- 5.5 It should be noted that the Council may not refuse an application without first offering the applicant an opportunity to make oral representations. Accordingly, if Members reject the recommendation, such an offer will be made before a further report to Committee is made.
- 5.6 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 CL495 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 common land.
- 6.4 Members should note that the decision of the Committee in relation to an application to correct the common land register is a legal decision and is not a matter of policy or discretion.

## **7.0 Conclusion**

- 7.1 I am of the opinion that the Application has been duly made. The evidence submitted by the Applicant supports the claim that the Application Land was included within the boundaries of CL495 as a result of a mistake which was

made by the registration authority. Under Section 19 (2) (a) of the 2006 Act this mistake can be corrected.

7.2 The land is not subject to any rights of common and no objections were received. I am, therefore, of the opinion that de-registration of the Application Land as common land will not be unfair to any person.

7.3 I recommend that this Committee resolves that the common land register be corrected and the Application Land be removed from register unit CL495.

**Angela Jones**

**Acting Executive Director – Economy and Infrastructure**

19<sup>th</sup> July 2019

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## **APPENDICES**

***Appendix 1 - Map of the Application Land***

***Appendix 2 – Application CA10/41***

***Appendix 3 – 1968 Application***

***Appendix 4 – copy First and Second Edition Register Maps CL495***

## **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): Thursby

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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