
Penderfyniad y Cynnig

Ymweliad â safle a wnaed ar 15/10/2018

gan Joanne Burston BSc MA MRTPI
Arolygydd a benodir gan Weinidogion Cymru
Dyddiad: 09/11/2018

Proposal Decision

Site visit made on 15/10/2018

by Joanne Burston BSc MA MRTPI
an Inspector appointed by the Welsh Ministers
Date: 09/11/2018

Proposal Ref: COM/3207727 **Land at Brynmenyn Common, Brynmenyn**

Register Unit: CL 81 - A tract of about 32.8 acres of upland grassland, bracken and thick scrub, which includes several historic quarries and a primary school.

Commons Registration Authority: Bridgend County Borough Council

- The proposal is made by Bridgend County Borough Council ('the Council') under Section 19(2)(a) of the Commons Act 2006 ('the 2006 Act') to correct a mistake made by the Commons Registration Authority in making or amending an entry in the register.
 - The proposal land is a parcel of land consisting of Brynmenyn Primary School.
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Decision

1. The proposal is refused.

Procedural Matters

2. I carried out an accompanied site inspection on 15 October 2018. My decision has been made on the basis of my observations on this visit, taking account of the proposal and the representation received in response to the advertisement of the proposal.
 3. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objective of supporting safe, cohesive and resilient communities.
 4. The application was made on 4 May 2018 by Bridgend County Borough Council itself, and thus constitutes a proposal rather than an application. The Open Spaces Society objection refers to the confusion caused by the use of the term 'application' on the statutory notice rather than 'proposal'. Nevertheless, although I consider that the lack of clarity with regard to the correct terminology was regrettable, I do not find that any prejudice has been suffered by anyone as a consequence. I have therefore proceeded to determine the matter on the basis that the proposal has been properly made and advertised.
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Main Issue

5. The proposal has been made in accordance with the provisions of section 19(2)(a) of the 2006 Act which provides that a Commons Registration Authority (CRA) may amend its register of common land to correct a mistake made by the CRA in making or amending an entry in the register.
6. Section 19(4)(a) permits a CRA to make amendments on its own initiative. The main issue is whether a mistake was made by the CRA in making an entry in the register and whether the correction of the register would be unfair on anyone.
7. The onus of proving the case in support of the correction of the register of common land rests with the body making the proposal, and the burden of proof is the normal, civil standard, namely, the balance of probabilities.

The Proposal

8. The proposal is to remove from the register a parcel of land consisting of Brynmenyn Primary School ('the proposal land') from register unit number CL 81 Brynmenyn Common.
9. The Council states that the proposal land should not have been included as part of the Commons Register (CR). At a meeting dated 29 March 1910 the Commoners consented to the proposal land being enclosed and used for the purposes of a school. A sum of £10 from Glamorgan Council as payment of compensation agreeing to the full satisfaction and extinction of the commoner's rights over the proposal land was agreed. The proposal land was purchased by Glamorgan County Council for the erection of an elementary school on 14 June 1910. This agreement was secured through a deed dated 14 August 1910 made between the Commoners of the Manor of Ogmore and the Glamorgan County Council. Furthermore, the Scheme of Regulation for the Management of the Common, approved 5 March 1935, excludes the proposal land.
10. The Common, including the proposal land, was entered onto the register on 2 January 1967 and being undisputed became final on 1 October 1970. Subsequently, questions regarding the ownership of the Common arose and a decision of the Commoners Commissioners, dated 21 July 1988, concluded that the Common was owned by the Duchy of Lancaster, with the exception of two parcels of land, one of which is the proposal land.
11. Finally, a letter dated 6 September 1994 from Mr JB Humphreys¹ acknowledges that *"...the plan prepared for the Scheme of Regulation in 1935 excluded the school property whereas under the Commons Registration Act 1965 the school was included. The removal of the school property from registration may be a matter for legislation.."*
12. The Council submits that this evidence demonstrates that an error was made by including the school property in the commons register unit CL 81.

¹ Who was at that time Commons Registration Officer for West Glamorgan County Council.

Reasons

Whether a mistake was made by the registration authority such that the register should be corrected

13. The description of the land in the Land Section of the CR states that the area to be registered extended to about 32.8 acres (13.274 hectares) called Brynmenyn Common in the Parish of Ynysawdre as marked with a green verged line inside the boundaries on sheets Nos. SS98SW and SS98NW of the register map and distinguished by the number of this register unit.
14. A second entry on the Land Section of the CR indicates that the provisional registration was not challenged and became final on 1 October 1970. There are three applicants registered for the unit CL 81.
15. I do not have copies of any of the applications or maps showing the land to be registered. These maps would have been the basis for the CL 81 register map. Whilst I have a copy of the plan attached to the Scheme of Regulation for the Management of the Common, I have no way of knowing whether this is the plan on which the registration was based.
16. The 1965 Act does not require applications for the registration of common land to describe the land in writing, only to provide a map showing the land. There is nothing in the limited description of the land in the register which confirms the exact boundaries of the common and without having sight of the map on which the application was based it is not possible to know whether the portion of land in question was ever meant to be included.
17. It should be noted that on receipt of a duly made application the CRA were required to provisionally register the land, right or claimed ownership that was the subject of that application in the relevant section of the register, irrespective of the existence of any supporting evidence. Accordingly any objectors to the application(s), such as the Council, could make their objection known and have their case heard by the Commons Commissioner. I have no evidence of any such objections. Therefore there is no evidence of a mistake made by the CRA.
18. To pull these findings together, it is clear that the inclusion of the school within the CR is inconsistent with the various deeds and the plan attached to the Scheme of Regulation for the Management of the Common. However, it is not clear if the inconsistency occurred as a result of a mistake by the CRA. Given these findings it is unnecessary for me to go on to consider whether the correction of the register would be unfair on anyone.

Conclusions

19. From the information available it is not possible to conclude with any certainty what the Council's intentions were when the registration application was decided and thus whether it made a mistake in making an entry in the register. Therefore, without convincing evidence that the mistake identified by the Council was actually made, the proposal cannot not be granted.

Joanne Burston

INSPECTOR
