

Application No. 2788
Application to create a new right of common
Section 6 of the Commons Act 2006



Dominant tenement: Little Killiow, Killiow
Servient tenement: Land known as Killiow Common
Situated in the parish of Kea, Cornwall

The Statutory Requirements

- 1 Section 6 of the 2006 Act provides that an application can be made to the Commons Registration Authority to create a right of common.
The Commons Registration (England) Regulations 2008 (the 2008 Regulations) set out the procedures to be followed.
- 2 The Application was made on 8th November 2011. The application has been made in accordance with the provisions of section 6 of the 2006 Act which provides that
 - (1) A right of common cannot at any time after the commencement of this section be created over land to which this part applies by virtue of prescription.
 - (2) A right of common cannot at any time after the commencement of this section be created in any other way over land to which this part applies except
 - (a) as specified in subsection (3); or
 - (b) pursuant to any other enactment.
 - (3) A right of common may be created over land to which this Part applies by way of express grant if:
 - (a) the land is not registered as a town or village green; and
 - (b) the right is attached to land.
 - (4) The creation of a right of common in accordance with subsection (3) only has effect if it complies with such requirements as to form and content as regulations may provide.
 - (5) The creation of a right of common in accordance with subsection (3) does not operate at law until on an application under this section:
 - (a) the right is registered in a register of common land; and
 - (b) if the right is created over land not registered as common land, the land is registered in a register of common land.

- 3 An application must be made in accordance with the 2008 Regulations. Paragraph 16 of the 2008 Regulations requires that an application must –
 - (a) be made in writing on a form provided by the CRA to which the application is made; and
 - (b) be signed by, or by a representative of, every applicant who is an individual, and by the secretary or some other duly authorised officer of every applicant which is a body corporate or an unincorporated association.

- 4 In addition, Paragraph 1 of Schedule 4 to the 2008 Regulations requires that an application under Section 6 to the 2006 Act must
 - (1) only be made by
 - (a) the owner of the land over which the right of common is to be exercisable, or
 - (b) the owner of the land to which the right is attached, and the application must show in which capacity it is made.

 - (2) The application must show that the following persons consent to it:
 - (a) the owner (other than an owner who is the applicant)
 - (i) of the land over which the right of common is to be exercisable
 - (ii) of the land to which the right of common is to be attached;
 - (b) any relevant leaseholder of the land over which the right of common is to be exercisable;
 - (c) any person having the benefit of a relevant charge over the land over which the right of common is exercisable.

 - (3) The application must include:
 - (a) evidence of the applicants capacity to make the application by virtue of sub-paragraph (1)(a) or (b);
 - (b) a description of the right of common to be created;
 - (c) a description of the land over which the right of common is to be exercisable;
 - (d) a description of the land to which the right of common is to be attached; and
 - (e) where the right of common to be created consists of a right to graze any animal, evidence that the land over which that right would be exercisable is able to sustain the exercise of that right.

- 5 The onus of proving the case in support of the creation of a right of common rests with the person making the application, and the burden of proof is the normal, civil standard, namely, the balance of probabilities.

Representations

- 6 No objections were received in relation to the application. Three representations were received in support of the application from local residents.

Reasons

The Application

- 7 The application was made to Cornwall Council by and signed by Tomas D.J.S. Hill on 8th November 2011 on Form CA1, the prescribed Form.

Express Grant

- 8 The right of common to be created is by way of express grant on land which is not a town or village green, and the right is attached to land.

Capacity in which the application is made

- 9 The application is made by the owner of the land to which the right is to be attached, as evidenced by Land Registry Title CL286018.

Consent

- 10 The owner of the land over which the right is to be exercisable has consented, as evidenced by a Deed of Grant, dated 13 November 2013. There are no other persons with an interest in the land.

Evidence

- 11 The applicant has shown that he is the owner of the land to which the right of common is to be attached.
- 12 The right of common to be created is a right of turbary and estovers.
- 13 The right is to be exercisable over 0.363 hectares of land described as Killiow Common, and edged red on the plan forming Schedule 1 of the Deed.
- 14 The right of common of turbary and estovers is to be attached to 0.107 hectares of land described as Little Killiow in Title CL286018.
- 15 The right of common to be created does not include the right of common of pasture.
- 16 It is noted that the land over which the right of common is to be exercisable is smaller than that originally claimed by the applicant and shown on the map accompanying the formal Notice of application, by virtue of the above-mentioned Deed of Grant.
- 17 Notice of the application was given in accordance with the Commons Registration (England) Regulations 2008.

Decision

The application to create a new right of common exercisable over a smaller area of land than originally claimed meets the regulatory requirements as set out above and consequently:

The right of turbary and estovers is attached to land at Little Killiow edged blue and exercisable over common land at Killiow Common edged green on the accompanying plan.

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