

Application No. 2830

Decision

Application to amend the register to record an historic severance of a right of common Schedule 3 of the Commons Act 2006

In Summary – the application is approved

Application 2830

Stephens & Scown submitted an application on 20th February 2013 to record the severance of a right of common affecting rights entry 79 of register unit No. CL 138 - Cardinham Downs.

Original Application 0584

CL 138 (Cardinham Downs), entry 79: the right to graze one head of cattle or three sheep attaches to two parcels of land at Heatherview. Ladyvale Tenement, approximately 7.153 hectares, and Heatherview, approximately 10.613 hectares, 40.262% and 59.738% of the dominant tenement respectively.

Applicants case

A Conveyance dated 15th September 1983 between Michael Albert Lloyd and Reginald Stanley Lyne severed the right to graze one cow or three sheep from land to which it previously attached, Heatherview only, to be held in gross.

Representations

Representation has been received from Eversheds in a letter dated 19 June 2014, objecting on behalf of The Forestry Commission, owners of Ladyvale Tenement, CL223669.

On 9th November 1979 Lloyds Bank Limited as executors to Miss Pictor conveyed the Ladyvale Tenement to the Forestry Commission. The Conveyance is silent as to any rights attaching to or being excluded from the 1979 Conveyance.

The Forestry Commission submit that the right was not severed from the land at Ladyvale Tenement and so the application should be refused.

Commons Registration Authority's (CRA's) provisional determination

On 24 June the CRA wrote a letter, sent to both parties, minded to apportion one sheep to Ladyvale Tenement and the right to graze one head of cattle or two sheep to Heatherview, and invited further comment.

Comment from Applicant

On 22nd July Stephens & Scown wrote a letter asserting that their client has exercised the right to graze one head of cattle or three sheep since the 1983 Conveyance, comprising twenty nine years of right as user. They claim the objector has lost its right to graze one head of sheep under the doctrine of lost modern grant, which is for 20 years.

Further Consideration by the CRA

The CRA has further considered the matter and believes the apportionment of the right to graze one head of cattle **or** three sheep to be wrong as it could lead to an increased burden on the servient tenement, the common land. If the apportionment were to go ahead the owners of Ladyvale Tenement could graze one sheep whilst the owners of Heatherview could graze one cattle, thus increasing the burden on the servient tenement by one sheep. Following the rules of apportionment, there is to be no increase in the burden on the servient tenement.

The right to graze one head of cattle or three sheep is not capable of being apportioned.

Following apportionment rules the right attaches to the larger parcel of land if the land is split. The larger parcel of land in this case is the land at Heatherview comprising nearly 60% of the original holding.

Decision

The right to graze one head of cattle or three sheep which once attached to 17.766 hectares and which is incapable of being apportioned attaches to the larger portion of the original dominant tenement, namely land at Heatherview comprising 10.613 ha, and is therefore capable of being subject to an historic severance in totality.

For the reasons given above the Application is approved.

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Date: 30 October 2014