

**Commons and Greens Sub-Committee**  
Meeting to be held on 22 September 2011

Electoral Division affected:  
Lancaster Rural East

**Commons Act 2006**  
**Schedule 3**  
**Commons Registration (England) (Amendment) Regulations 2009**

**Application for the Amendment of a Register in relation to Rights of Common being grazing rights registered as Entry 3 in the Rights section of Register Unit CL123, Black fell, Blanch Fell and Haylot Fell Littledale, Lancaster**  
(Appendices 'A' 'B' and 'C' refer)

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**Executive Summary**

An Application from William Alan Huddleston, Margaret Elizabeth Atkin, Christine Mary Sayer and Barbara Ruth Huddleston to register severance of the rights away from land at Bell Hill Farm and then subsequent transfer of rights to the Applicants which are rights in gross.

**Recommendation**

That the application to register the severance of rights and transfer in gross to the applicants jointly of the rights registered in Entry 3 of the Rights Section of CL123 namely the right to graze sheep to a limit of 79 and a half sheepgates (one ewe together with followers and a hog counting as the sheepgate) over the whole of CL123 be accepted and the register be amended in accordance with the Commons Registration (England) Regulations 2008 as amended to register said severance and transfer.

**Background and Advice**

The Commons Act 2006 (the 2006 Act) makes provision for the registration of common land and of town and village greens. Registration Authorities were created to maintain two registers, one for common land and the other for village greens. The County Council is the Registration Authority for the County of Lancashire and has previously delegated powers and functions concerning alteration of the registers to the Commons and Town Greens Sub-Committee.

The 2006 Act makes provision in Schedule 3 and by Regulations for commons registration authorities to amend their registers of common land and town or village greens in consequence of qualifying events which have happened since the Registers were closed under the 1965 Act. A severance and then transfer of rights in gross since 1970 not yet registered are such qualifying events and the application in this matter is that this has happened and should now be registered.

It is apparent that the rights at present are registered as being the right to graze sheep to a limit of 79 and a half sheepgates (one ewe together with followers and a hog counting as the sheepgate) over the whole of CL123 (Appendix 'A' refers) and these rights are at the moment shown as attached to land at Bell Hill Farm Littledale as shown on the supplemental map with the Registers (Appendix 'B' refers).

Copies of various Deeds have been provided.

These show that the farm as shown on the supplemental map, along with its grazing rights, was purchased in 1951 by Edward and Mary Huddleston as shown on the Deed plan (Appendix 'C' which will be available at the meeting). Parts of the land have since been transferred. The first transfer was in 1985 and the grazing rights were expressly reserved to Edward and Mary Huddleston. It was a Deed of Gift of a small part of the farm and it was agreed and declared that it "does not include (and there are expressly reserved to the Donors) all those rights of common sheep and cattle gaits on Black Fell Blanche Fell and Haylot Fell appurtenant to Bell Hill Farm". It is arguable that this is when all the rights became severed but it is suggested that on balance it is not clear enough and it may be considered that only those rights attached to the small section being transferred were severed at this time. It is advised that these few rights were then held in gross by Edward and Mary Huddleston.

There were further transfers in 1991 with rights retained by Mary Huddleston and a trustee, as Mr Huddleston had died. The Solicitors confirm the rights in gross passed to Mary Huddleston and Mr Gillibrand on the death of Mr Edward Huddleston. There was then a transfer of part of the farm in January 2002 but the rights were not mentioned and in August 2002 there was the transfer of most of the remainder of the land together with all the commons rights as per the 1951 purchase to the applicants.

Notice of the application has been duly served according to the Regulations and no response has been received save for further details being requested by a neighbouring landowner but no objection raised and a visit to inspect the file by a rights holder.

It is advised that if the application is well founded the appropriate amendment to the register shall be made. The Statutory provisions specifically provide for amendment of the register in cases of severance and transfer of rights which are then rights in gross.

It is advised that some rights were expressly reserved and thereby were not transferred with the land but became severed in 1985 and 1991. The small piece of land at the farm which has not been the subject of any transfer had any rights which

were attached to it sold separately in 2002 when all the rights were stated to be transferred to the applicants.

The main difficulty would appear to be the sale of several fields in January 2002 with no mention of the rights. Usually this would mean that the rights attached to the land went with the land. Documentary evidence is usually required when considering an application for severance under Regulation 42 of the 2008 Regulations. Regulation 42 provides that unless the instrument or other contemporary evidence showed an intention that the rights should be severed, the authority should not grant an application to register a severance. Guidance from DEFRA (para 10.5.10) says that a right of common may nevertheless be treated as having been severed even in the absence of contemporary written evidence, if the application shows that the right was subsequently treated as severed and there is no other explanation for that treatment but that the right must have been severed at that time.

In this matter the Solicitors who acted for the purchasers in 2002 confirm that there was no intention to transfer any grazing rights and confirm that the purchaser makes no claim to any grazing rights nor believe that they ever held any. They are not aware of them exercising any rights. A letter direct from the purchasers confirm their belief that their Solicitors can provide the information about the grazing rights. Only a few months after the sale, the rights were transferred to the applicants separately from the land.

It is therefore advised that, on balance there would appear to be sufficient evidence of the rights being severed at various times to end up held in gross by Mr and Mrs Huddleston and then Mrs Huddleston and Mr Gillibrand as trustee. They transferred the rights to the Applicants in 2002. It may be considered that the severance and transfer should now be shown on the Register and the rights shown as jointly held in gross by the Applicants.

### **Consultations**

Notice of the application was given to persons appearing in the register to be interested in the rights of common as above and also to all parties who have requested to be notified of applications under the 2006 Act.

### **Implications:**

This item has the following implications, as indicated:

### **Risk management**

Consideration has been given to the risk management implications associated with this proposal. The Sub-Committee is advised that, provided the decision is taken in accordance with the advice and guidance given, and is based upon relevant information contained in the report, there are no significant risks associated with the decision-making process.

**Local Government (Access to Information) Act 1985**  
**List of Background Papers**

Paper	Date	Contact/Directorate/Tel
File 3.571		Jane Turner, Office of Chief Executive, 01772 532813

Reason for inclusion in Part II, if appropriate

N/A