

Commons and Town Greens Sub-Committee

Meeting to be held on 23 September 2014

Electoral Division affected:
Ribble Valley North East

Commons Act 2006

Commons Registration (England) Regulations 2008

Regulation 44

Application for a Declaration of Entitlement to be recorded in respect of the Rights of Common being grazing rights and the right to take bracken and bedding registered as attached to land at Bambers Farm, Bolton by Bowland, Clitheroe, being entry 4 in the Rights section of Register Unit CL65Y.

(Appendices 'A' and 'B' refer)

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Executive Summary

An application from Mr Philip Stephen Woods for a Declaration of Entitlement to record his rights to graze sheep and take bracken and bedding over that land contained in Common Land Register unit CL65Y

Recommendation

That a dedication of entitlement for the Applicant be recorded in accordance with the Regulations in respect of grazing rights showing 0 sheep and a declaration of entitlement be recorded for the right to take bracken and bedding as attached to land at Bambers Farm, Bolton-by-Bowland, Clitheroe on Unit CL65Y.

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 provisions by Regulations for commons registration authorities to record in their registers of common land that a person is entitled to exercise some or all of the rights attached to a particular piece of land. The rights remain attached to the land but can at the moment be exercised by the owner and the application in this matter is that this is the case and should now be registered.

Regulation 44 states that applications for a declaration of entitlement must be made by a freehold or leasehold owner of the land to which the rights are attached. In this matter the rights are attached to Bambers Farm, Bolton by Bowland, Clitheroe, as shown edged red on the supplemental map set out at Appendix 'A'.

The rights attached to this land are:

- 1) The right to graze 36 sheep
- 2) The right to take bracken and bedding; over that part of the land in this register unit shown edged red on the register map and set out at Appendix 'B'

A copy of the title number LAN62570 has been provided which indicates that part of Bambers Farm as shown on the supplemental map is owned by Mr Philip Stephen Woods and Mr John Ashworth and it has been calculated that this land is 0.6% of the total land holding of the farm. 0.6% of the grazing rights are calculated as the right to graze 0.2 sheep. Mathematically, it actually produces a fractional quantity but, following guidance from DEFRA it is advised that a right to graze a fractional animal is not recognised in law and the fractional right has been rounded down. The Applicant has been made aware of this.

With regard to the right to take bracken and bedding over the common CL65Y. The right is unquantified and the Defra guidance dated January 2014 to commons registration authorities and the Planning Inspectorate for the pioneer implementation states 'where an unquantified right is for the benefit of the holding as a whole, rather than attached to a particular dwelling-house or building, it may be reasonable to permit apportionment if the effect would not increase the overall burden on the common. For example, a right to take bracken as cattle bedding may be implied to be a right to take sufficient bedding to meet the needs of all the cattle which may be over-wintered on the dominant tenement; if the dominant tenement is divided into two or more holdings in separate ownerships, it may be reasonable to treat each of those holdings as entitled to the same right, impliedly limited by the number of cattle which may be over-wintered on that holding.

On balance, it could be argued the applicant would not be entitled to any grazing rights over the common CL65Y, bearing in mind he has no grazing rights in respect of the sheep, there would also be no requirement for him to take bracken and bedding from the common land. However; it seems that as the right is not attached to any particular dwelling-house or property. It could further be argued that the right is not exclusive to the sheep and the applicant may have other types of livestock on his land holding for which he would require the bracken and bedding. In the circumstances, it is suggested to Committee that the applicant would be entitled to the right to take bracken and bedding

It is advised that if the application is well founded, the appropriate amendment to the register shall be made. Here it is advised that although the application was to record the right to graze sheep, the fractional quantity of 0.2 sheep is not recognised therefore, the entitlement to graze sheep would equate to zero and would mean there was no rights to graze sheep. With regards to the right to take bracken and

bedding it is suggested that this right is accepted as this right is not determined by the grazing rights.

In conclusion it is recommended that a dedication of entitlement for the Applicant be recorded in accordance with the Regulations in respect of grazing rights showing 0 sheep and a declaration of entitlement be recorded for the right to take bracken and bedding as attached to land at Bambers Farm, Bolton-by-Bowland, Clitheroe on Unit CL65Y.

Consultations

N/A

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 3.620 | Various | Saleha Khalid, Office of the Chief Executive 01772 536098 |

Reason for inclusion in Part II, if appropriate
N/A