



SIXTH NATIONAL SEMINAR ON COMMON LAND AND TOWN AND VILLAGE GREENS PROCEEDINGS

15 September 2006

Edited by

Christopher Short Countryside & Community Research Unit, University of Gloucestershire

Martin Wright Commons and Greens Registration and Management Association



Supported by



CONTENTS

| | | | |
|---|------------------------|--------------------------------|----------|
| Introduction | Martin Wright | <i>Cornwall County Council</i> | 1 |
| Registering new town and village greens | Hugh Craddock | <i>Defra</i> | 3 |
| Digitising Maps | Jenny Griffiths | <i>Powys County Council</i> | 5 |
| Abolition of Form 21 and the new CON29 Pt II | Hugh Craddock | <i>Defra</i> | 6 |

INTRODUCTION

Martin Wright *Chair of CGRMA*



This is the first full meeting of the Commons and Greens Registration and Management Association (CGRMA). The aim of CGRMA is for it to be the association for Commons Registration Authorities in all aspects of common land and town or village greens. The name CGRMA might be broken down in the following way:

- Commons: common land;
- Greens: town or village greens;
- Registration: all aspects of Part 1 of the Commons Act 2006;
- Management: Powers of protection - Part 4 Intervention powers; but also Management (Part 2) and Works (Part 3) where Authorities own commons;
- Association: A Private Company, limited by guarantee, registered at Companies House.

The purpose of the association is:

- to support officers working with the registration and management of commons and greens, and others who perform related tasks,

in all aspects of the functions and duties of a commons registration authority.

This purpose is supported by the following objectives for the association:

- to promote good practice in all aspects of common land and town and village greens and associated activities throughout England and Wales;
- to support members in their work and improve their effectiveness; and
- to promote communication so that members are well informed about matters both political and technical affecting the registration of common land and town or village greens, such as the implementation of the new Commons Act.

The association was announced at the 5th National Seminar in 2005 by the then minister Jim Knight MP. It was set up at Companies House as a company limited by guarantee in early 2006. This means there are no shares issued and the Association does not seek to make a profit.

There is limited liability for members based on agreement to pay a set sum (usually £1) if the Association is wound up.

At the inaugural meeting of the association in February 2006 the following posts were elected:

- Chair / Director: Martin Wright, Cornwall County Council;
- Company Secretary: Christine Plant, Suffolk County Council.

At the inaugural meeting it was agreed that there would be two types of membership, corporate and individual:

- Corporate: Commons Registration Authorities;
- Individual: Officers whose work includes commons registration but whose Authority is not a member.

In time a third type of membership will be added, namely Associate for non voting members with an interest or role in commons e.g. private practices, academics and officers in government departments, Parish and District Councils, National Parks.

The set-up costs have been met by Defra who have provided £100,000 for this purpose. Therefore it is intended that membership is free for the first year, 2006/07. For 2007/08 we are proposing a subsidised fee of £50 with a suggested corporate fee of £100 per authority per year thereafter.

One of the main features of CGRMA is its website, which can be visited at www.cgrma.org.uk. It is hosted by Suffolk County Council. The homepage is openly accessible, however other pages are password protected for the sole use of CGRMA members. These pages contain:

- A brief history of Common Land and Town and Village Greens (with further reading);
- The Commons Act 2006 as and when Commencement Orders are made by:
 - ◆ Defra concerning land in England; and
 - ◆ The Welsh Assembly Government for land in Wales.
- Case Law, such as the effects of the Oxfordshire County Council v Oxford City Council (Traps Ground Case) as it affects applications for the registration of new Town or Village Greens;
- Good practice, such as how to process applications for:
 - ◆ removal of land from a register (Form 17);
 - ◆ amendment of a register in relation to a right of common (Form 19);
 - ◆ land which became common land (Form 29);
 - ◆ land which became a town or village green (Form 30);
 - ◆ a right of common over new land (Form 31); and
 - ◆ a claim to ownership of land registered under section 13 of the (1965) Act (Form 32).
- Commons registration forms to view and/or download;
- News of forthcoming training events such as this seminar and future training events organised or supported by CGRMA;
- Special offers on new publications.

Finally the website will also contain the CGRMA Extranet which will provide a forum for discussion of problems such as:

- procedure for registration of New Village Greens;
- problems associated with this process;
- division of blocks of commons rights – how to resolve this knotty problem.

The Extranet is intended as a discussion forum for members to post problems and receive (hopefully) replies from members who have experienced and perhaps solved similar problems.

In the future the website will be able to offer:

- links to Defra and other organisations;
- digitised maps of areas of common land and village greens as available;
- updates of legal decisions and matters affecting common land and village greens;
- details of training courses available from other providers;
- organisation training courses hopefully with accreditation.

Don't forget that your expertise is a valuable resource so please let us know of any items you wish to be included on the website/extranet.

The secretary Christine Plant can be contacted via the CGRMA email address:

- admin@cgrma.org.uk

Martin Wright February 2007



REGISTERING NEW TOWN OR VILLAGE GREENS

Hugh Craddock *Defra*

Introduction

Section 15 of the Commons Act 2006 introduced new criteria for the registration of town or village greens, including transitional arrangements applying where the use of a green was challenged before the date on which section 15 is brought into force, so that an application must be brought within five years of the date of the challenge.

Defra believes there is a good case for commencing section 15 as soon as possible, so that existing latent claims can be tested. However, we plan to roll out the commencement of part 1 generally on a phased basis, beginning with pilot implementation areas.

This workshop will explore how section 15 might be implemented on a transitional basis, using, where appropriate, existing procedures so as to minimise any changes to the present system where possible. Please note that the aim of the workshop is to explore how the *transitional* arrangements might work, pending the full implementation of part 1 in any particular area.

1. Is it sensible to implement section 15 on a transitional basis, ahead of the implementation of part 1 generally?

Yes, part 1 to follow quickly with equal implementation time for England and Wales. Pilot should consider rural and urban situations and the quality of information required.

2. What aspects of the existing registration procedures (prescribed in the Commons Registration (New Land) Regulations 1969) need changing? For example:

a. Should the application form be prescribed in regulations, or should regulations merely state what must appear in the form (so that, for example, authorities could supply their own form)?

Prescribing the form would have at least two benefits: there wouldn't be any complications or contentious issues arising over the content and suitability; authorities haven't got the time to develop their own form. If the form wasn't prescribed, a 'shopping list' should be provided to illustrate what items must be included in a form. Furthermore, Defra should provide

guidance — following consultation — showing authorities how to produce their own form. Elements might be best prescribed such as the scale of maps when dealing with boundaries.

b. Is a statutory declaration still required to support an application?

Yes, this is an important mechanism because it places the onus on the applicant, who must ensure that they are correct.

c. Are 'distinguishing numbers' (i.e. each application must be serially numbered) still relevant?

Yes, and each authority should have their own numbering scheme. Also, they need to record the validated date of the application.

d. Should the application form be accompanied by official guidance?

Yes, guidance would be helpful but not too formal, allowing for local needs.



e. Should a larger scale map be required (than the current 1:10,560)?

YES! Bigger scale maps are a must. Guidance on the use of maps suggested, for example one map showing all evidence relating to locality and the standard use of colour.

f. Should the registration authority be obliged to return all the documents to the applicant if it rejects the application?

Authorities should not be obliged to return all documents due to cost. However, they need to keep them on file should there be a review of any decision. This means that a copy may need to be returned to the applicant but the applicant should cover the cost of this.

3. What new procedures are required? For example:

a. Should the application form be required to define the locality which claims to be able to exercise recreational rights over the land? If so, should a map be required?

Yes, there should be a requirement to define the locality/neighbourhood but guidance can be requested on how to do this.

b. Should the registration authority be obliged to hold a hearing in disputed cases?

Regulations should prescribe the circumstances in which a hearing should be held and also when an authority can choose to hold a hearing. But there would be resource and finance implications. A hearing should be compulsory where the landowner is the local authority to ensure transparency. Also, it was suggested that:

- specimen witness evidence statements should be available, and that these should also be supported by a statutory declaration;
- forms should be available free of copyright restrictions, so that they might be copied;
- applicants should be required to state the ownership of land affected by an application, where this was reasonably known;
- regulations should make clear the valid date of an application, particularly where there was a flow of information between the applicant and the registration authority;
- there were data protection implications in disclosing information contained in the registers through electronic systems.

4. Is the transitional implementation of section 15 likely to attract additional applications (i.e. additional to the level of applications which might have materialised pre-Trap Grounds)? If so, are these applications likely to generate a one-off spike in activity, or continue? What evidence exists for increased activity?

Implementation of s.15 would almost certainly attract an increase in applications and there would be a spike in activity. Prospective applicants would feel more confident about their chance of success post *Trap Grounds* ruling. Cumbria asserted that it had seen an increase in the number of applications following the *Trap Grounds* ruling. If there is to be a spike of applications, they may need to consider the process by which applications are formally withdrawn.

Different ways of dealing with disputes:

- Lancashire — members hear oral evidence and cross-examine;
- Powys — rights of way committee set out procedure, yet to be tested;
- Cornwall — in 1990s a clutch of cases, four succeeded without a hearing;
- Derbyshire — do hearings themselves by using competent officers, good use of time and ensure Inspectors used efficiently.

DIGITISING MAPS

Jenny Griffiths *Commons Registration Officer, Powys County Council*

This is an issue that nearly all Commons Registration Authorities (CRA) are at least thinking about even if they are not implementing some sort of improvement at the moment. What this presentation seeks to do is to raise some of the issues that have arisen in Powys and to outline the solutions that we have implemented. Since other CRAs have been tackling similar issues they may have come to different solutions, and we can discuss these as we go along.

The 1965 registers contain a range of inaccuracies and areas where the boundary of the common land (CL) unit is not clear. It is important to identify and be aware of these and to then be consistent in how you deal with them. For example some CL units work alongside 'old' administrative boundaries, often on 1:10560 scale base maps. On transferring to the 1965 register it is clear that the line follows other features, such as a river, in some places. This needs checking and validating. At other times when sheets are placed alongside each other it is clear that the mapping has been inconsistent as lines do not link together or a common land boundary does not appear on the neighbouring sheet.

Where there have been major developments these are not always properly amended on the register. In Powys there is a case of a by-pass, circa 1975, that has been marked in pencil on the

register but no application to formally amend the register has ever been made. Other changes, such as land being removed from the register or road widening, are pencilled in freehand on the maps making interpretation difficult when preparing the electronic registers. In such cases the register needs to be amended, a qualifying event under schedule 3 of the Commons Act 2006 'Transitional Provision'. Sometimes when the map has been digitised it is clear that the CL unit does not align with the fence-lines or the physical features shown on the modern OS digital background mapping.

Finally the introduction of electronic registers can highlight possible conflicts. For example some buildings and gardens may appear to be within the CL unit. Is this wrongly registered or an encroachment? Such matters are equally important when attempting to identify the extent of a dominant tenement. In doing so you can reveal a number of conflicts; for example, areas where two dominant tenements appear to be claiming rights for the same area of freehold land, or that an area of land within the CL unit is part of the dominant tenement. The benefit of highlighting and hopefully resolving these issues is that the electronic register will be able to record entitlements and undertake apportionments when a area of land is sold.

Discussion Points

- There is the opportunity for a community chest of data – however there is a need for some guidance for all Local Authorities on how this might be handled. Otherwise each CRA will approach this differently and there will be no collective benefit.
- IACS maps – delegates were unsure as to why CRAs should not have them. It was confirmed that WAG/RPA/CROs have met in Wales to discuss this. IACS paying out on land lines so this is also useful for some conflicts in England. In Wales the rights are historic rather than land area so IACS maps would be less useful. IACS has already interpreted the registers for payment.
- Comments on Geodata survey for CROW 2000 in England:
 - ◆ good basis and have included on digitised maps;
 - ◆ not used in Cornwall as scrambled;
 - ◆ data not complete and has inaccuracies;
 - ◆ validation is the key.
- Digitised maps can link in to countryside services and be used in planning cases. This is already happening in some places.
- Overall view that this was a very good idea – however, there is a need to be proactive in order to get the right result.



ABOLITION OF FORM 21 AND THE NEW CON29 PT II

Hugh Craddock *Defra*



Registered common land is defined by the registers of common land held by registration authorities, generally county councils. At present, purchasers of land, who wish to establish whether land is registered common land, may undertake a statutory search of the registers. They must complete a form 21, which is prescribed in regulations under the Commons Registration Act 1965, and which must be submitted in writing with the prescribed fee and completed and returned by the authority in writing.

Since the *Common Land Policy Statement* in 2002, Defra has looked further at the statutory search regime, and concluded that it really does not make sense to retain it as a stand-alone procedure and that it would be beneficial to integrate the form into the existing commercial search arrangements. There is no provision in the Commons Act 2006 for official searches of the register, and the existing search form must cease to exist when the Commons Registration Act 1965 is repealed in due course.

We instead expect to integrate the commons search into the existing CON29 part II search

form. The Home Information Pack (HIP) [see annex A] regulations will lead to part I of the CON29 to be 'set free' from part II of the form allowing a search to be able to be made in isolation. We understand that form 21 searches must sometimes be carried out independently of property purchases for persons wishing to obtain an authoritative statement of what is on the register, this facility will be retained as part II of the CON29 and will be independent of part I.

We think it would be sensible if the changes to the CON29 part II (and the abolition of form 21) coincided with the introduction of HIPs on 1 June 2007, as there will be consequential changes to the CON29 when the HIP regulations come into force nationally.

We are now waiting for the CON29 Working Group (which brings together the Law Society, Local Government Association and local land registrars) to hold its next meeting to discuss Part I of the CON29 in relation to HIPs and to discuss the integration of the commons search into part II. The Department for Communities and Local Government will acquire formal responsibility for what was the CON29 part I,

which will be codified in regulations as part of the HIP scheme, but the Law Society still retains 'ownership' of Part II.

Comment during discussion — some authorities do not do CON29 Pt II on its own due to cost, or there would be higher costs if it was on its own. Home information Packs. Local Government Association (LGA) reps need to take up this point during local discussion relating to HIPS.

Response to group work questions:

1. How will authorities set the price for a common land search element on part 2 of CON29?

2. Would this be more or less than the present fee?

- Issue of cost recovery is important but will vary between authorities.
- Registers are open for public inspection.
- Should charge for follow up letters.
- Should drop last two questions from form.
- Keep the early questions but be more sophisticated than yes or no.
- Follow up charges should be realistic (more than £20).

3. What impact will the change have on funding for registration authorities' common land registers activity? What steps can be taken to maximise any positive impact?

- There will be additional work, money should be linked to local authority and ring fenced for the area it is based in. Where does money go now? Varies.
- Not clear what the level of inspection will be. Varies now between LAs.

4. Is an implementation date to coincide with the introduction of the HIPs achievable? What would be needed to achieve a smooth transition on 1 June 2007?

- Local Authorities (LAs) need information to start working on this, including the procedures.

5. What do registration authorities need to do to be ready for the change?

- Needs communication between district and county. Who gets the money and within what timescale. It might be possible to offer the part II system response by tiers?
- Need everything in place by Easter 2007, so changes should be agreed ASAP, including the copyright of the documents.
- Process will increase the potential for delay and answers required from more than one source.
- Response not as simple as yes or no. May need to treat change like existing question on a Right of Way? LAs need to discuss this with their LGA reps.







www.glos.ac.uk/ccru

**Countryside and Community Research Unit
University of Gloucestershire
Dunholme Villa
The Park
Cheltenham Glos GL50 2RH
Tel +44 (0)1242 714122**