



Application Decision

Site visit held on 10 March 2015

By Martin Elliott BSc FIPROW

An Inspector appointed by the Secretary of State for Environment Food and Rural Affairs

Decision date: 07 April 2015

Application Ref: COM581
Boswednack Common, Zennor

Register Unit: CL 315 (part)

Registration Authority: Cornwall Council

- The application, dated 14 May 2013, is made under paragraph 4(6)(a) of Schedule 2 to the Commons Act 2006 ('the 2006 Act').
 - The application is made by Mr D Coles for Save Penwith Moors.
 - The application is to register waste land of a manor as common land in the register of common land.
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Decision

1. The application is approved and the land outlined in red on the plan attached to this decision shall be added to the commons register.

Preliminary Matters

2. No objections have been raised to the application to register the relevant land as common land. My decision is based on the documents contained in the file provided by Cornwall Council, which includes the application and associated documents, and on observations made on my site visit.
3. The plan attached to the notice of the application shows a greater area of land to that subject to the application. The plan includes land to the south west of a watercourse which marks the correct boundary of the application land. The Council confirmed that the plan was in error and provided a modified plan showing the extent of the application land. Given that the plan attached to the notice includes a greater area of land than that subject to the application I do not consider that anyone will have been prejudiced.

The Application Land

4. The application land is 4.668 hectares and forms part of Boswednack Common. The vegetation is typical moorland heath made up of a mosaic of heather, furze, bracken and rough grass.

Main Issues

5. The application has been made in accordance with the provisions of paragraph 4 of Schedule 2 to the 2006 Act. The main issue is whether the land is waste land of a manor and whether before 1 October 2008:

- (a) the land had been provisionally registered as common land under section 4 of the Commons Registration Act 1965;
 - (b) an objection was made in relation to the provisional registration; and
 - (c) the provisional registration was cancelled in the following circumstance¹:
 - i) that the person on whose application the provisional registration was made requested or agreed to its cancellation (whether before or after its referral to a Commons Commissioner).
6. The onus of proving the case in support of the correction of the register of common land rests with the person making the application, and the burden of proof is the normal, civil standard, namely, the balance of probabilities.

Reasons

Whether the land had been provisionally registered as common land under section 4 of the Commons Registration Act 1965

7. The land was provisionally registered as common land unit CL 315 (part) on 12 December 1968 following an application on 24 June 1968 by Mr G Osborne.

Whether an objection was made to the provisional registration

8. An objection was raised to the provisional registration of the part of CL 315 subject to this application (X961).

Whether the provisional registration was cancelled in the circumstances specified in paragraph 4 (5) of Schedule 2 to the 1965 Act

9. By letter dated 16 July 1973 from Pool and Purchas, Solicitors, on behalf of Mr Osborne the application to register the land was withdrawn.

Whether the land at issue is of a manor

10. "Of the manor" is held to mean land which is, or was formerly, connected to the manor².
11. Lake's Parochial History 1868 in respect of the Parish of Zennor refers to the manor of Trevail and the manors of Boswednack, Treen and Trewey. The excerpt provided refers to the manors of Boswednack and Treryn or Treen being purchased by the late Davies Gilbert and that they are still the property (in 1868) of his representative the Honourable Mrs Gilbert. The tithe map and apportionment of 1841 identify the application land as apportionment number 847 covering 7 acres. The land is owned by a John Gilbert esq. with the occupiers being unnamed tenants of Boswednack Common. The land is named as Boswednack Common and no state of cultivation is recorded. The 15th century Penheleg Manuscript, recording the tithings in the Hundred of Penwith, shows the application land as being in the manor of Hornwell. A paper of P. A. S. Pool MA FRSA, published in the journal of the Royal Institute of Cornwall³, states that the land in question was in the manor of Hornwell.
12. Documents held in the County Records office include a mortgage for a number of landholdings and manors including Hornwell which is stated as being in

¹ Paragraph 4, subsection (5) of Schedule 2 to the Commons Act 1965

² *Hampshire County Council and others v Milburn (1991)*

³ New Series Volume III, part 3, 1959 [pp. 163-228]

Zennor and other parishes. A deed of release of mining ground refers to land in Zennor in the manor of Treviddern.

13. The vast majority of land in England is formerly of a manor although it is seldom possible to prove definitely that a particular parcel of land is of a manor. In the absence of any evidence to the contrary, and having regard to the evidence, it is most likely that the application land is land which, on the balance of probabilities, is of a manor.

Whether the land fulfils the character of waste land of a manor

14. The term 'waste land of the manor' has been defined⁴ as "...the open, uncultivated and unoccupied lands parcel of the manor, or open lands parcel of the manor other than the demesne lands of the manor". The question as to whether land is waste land of the manor is one which must be satisfied at the time of the application.

Open

15. Defra's published guidance⁵ (Defra guidance) indicates that 'open' means unenclosed. I noted on my site visit that there are the remains of a Cornish hedge or some form of bank and some wooden fence posts along the perimeter of parts of the application land. These features do not exclude access to the land. The land itself is not enclosed and I conclude that the land is open.
16. The applicant makes reference to Natural England's definition of access land and open country. This definition is not relevant in considering whether the land is open in the context of it being waste land of a manor.

Uncultivated

17. The land is moorland and is uncultivated.

Unoccupied

18. Defra guidance states that land should not be regarded as having ceased to be unoccupied and therefore not waste merely because it is subject to a tenancy, lease or licence whose sole or principal purpose is to enable the land to be grazed. Occupation requires some physical use of the land to the exclusion of others.
19. There is no evidence before me to suggest that the land is occupied to the exclusion of others and I conclude that the land is unoccupied.

Other Matters

20. The applicant indicates that the application is being made in the public interest to obtain some public input into the management of the moorland in the West Penwith peninsula. Whilst I note the reasons behind the application this is not a matter which I can take into account in determining the application.

⁴ Attorney General v Hanmer, 1858

⁵ Department for Environment Food and Rural Affairs, Guidance to commons registration authorities and the Planning Inspectorate, December 2014

Conclusion

21. Having regard to these and all other matters raised in the written representations I conclude that the application land fulfils the necessary criteria for registration and consequently I approve the application.

Martin Elliott

INSPECTOR

