



Application Decision

Site visit made on 10 March 2015

By Sue Arnott FIPROW

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

Decision date: 21 April 2015

Application Ref: COM 624

Land at Carn Brea, Parish of Carn Brea, Cornwall

Register Unit: CL 332

Registration Authority: Cornwall Council

- The application¹, dated 11 September 2013, is made under paragraph 4(6)(a) of Schedule 2 to the Commons Act 2006.
- The application is made on behalf of Carn Brea Parish Council.
- The application is to register waste land of a manor as common land in the register of common land.

Summary of Decision: The application is granted.

Preliminary Matters

1. A public notice of the application appeared in the 12 June 2014 edition of *The West Briton* newspaper and on Cornwall Council's website for the appropriate statutory period. Notice was also served on interested parties as required. Three objections were submitted in response: two of these sought alterations to boundaries with their own properties and one raised objection to registration of part of the application land over which the objector holds the mineral rights.
2. To assist me in determining the application I visited the site on 10 March 2015. No party expressed a wish to be present and I therefore inspected the land unaccompanied.

The Application Land

3. The application land lies in the Parish of Carn Brea to the south west of Redruth. It is broadly elliptical in shape and comprises a little less than 50 hectares of open land having the appearance of moorland. This consists mostly of gorse, bracken and bramble with little tree cover and parts are identified as lowland heath. From its boundary inwards it gently slopes upwards, in places steeply.
4. The area is recorded as open access land under the Countryside and Rights of Way Act 2000. It lies within a Conservation Area, an Area of Great Landscape Value, an Area of Great Historic Value and a World Heritage Site. Around half the site, including Carn Brea Castle and the high stone monument², is a Scheduled Ancient Monument. Public rights of way follow the perimeter of the application land on the west, south and eastern sides and others cross the site

¹ Reference no. 2858

² A monument "to the memory of Frances Lord de Dunstanville and Bassett" erected in 1836

from the north, south, east and west, together with many other unrecorded tracks and paths.

5. The majority of the application land is owned by Cornwall Council. An area around the castle is privately owned and at present operates as a restaurant. The land on which the monument stands is owned by Carn Brea Parish Council. Mineral rights to the northern half of the application area are owned by Cornish Minerals Ltd.

The Statutory Requirements

6. Paragraph 4(6)(a) of Schedule 2 to the Commons Act 2006 ('the 2006 Act') provides that any person may apply to the commons registration authority to register waste land of a manor as common land in the register of common land. The Commons Registration (England) Regulations 2008 (the 2008 Regulations) set out the procedures to be followed.
7. The application was made on 11 September 2013³. The application form indicates that it has been made in accordance with the provisions of paragraph 4 of Schedule 2 to the 2006 Act which provides that an application can be made where the land at issue is waste land of a manor and where before 1 October 2008:
 - (a) the land had been provisionally registered as common land under Section 4 of the Commons Registration Act 1965 ('the 1965 Act');
 - (b) an objection was made in relation to the provisional registration; and
 - (c) the provisional registration was cancelled in any of the following circumstances;
 - (i) the provisional registration was referred to a Commons Commissioner under Section 5 of the 1965 Act and the Commissioner had determined that although the land had been waste of the manor at some earlier time, it was not such land at the time of the determination because it had ceased to be connected with the manor and for that reason only the Commissioner refused to confirm the provisional registration;
 - (ii) the provisional registration was referred to a Commons Commissioner under Section 5 of the 1965 Act and the Commissioner had determined that the land was not subject to rights of common and for that reason refused to confirm the provisional registration and the Commissioner did not consider whether the land was waste of a manor;
 - (iii) the person on whose application the provisional registration had been made requested or agreed to its cancellation (whether before or after its referral to a Commons Commissioner).
8. An application must be made in accordance with the 2008 Regulations. Paragraph 16 of the 2008 Regulations requires that an application must –
 - (a) be made in writing on a form provided by the registration authority to which the application is made; and

³ For the purpose of remedying non-registration or mistaken registration under the 1965 Act, the application must have been made on or before 31 December 2020.

- (b) be signed by, or by a representative of, every applicant who is an individual, and by the secretary of some other duly authorised officer of every applicant which is a body corporate or an unincorporated association.
9. In addition, paragraph 14 of Schedule 4 to the 2008 Regulations requires that an application under paragraph 4 to Schedule 2 to the 2006 Act must include –
- (a) a description of the land to which the application applies; and
 - (b) evidence of the application of paragraph 4(2) of Schedule 2 to the 2006 Act to the land to which the application relates.

Reasons

The Application

10. None of the representations dispute that the application was properly made and the Registration Authority (Cornwall Council) is satisfied that all the statutory requirements were met. However one of the objections challenges the validity of the notice, submitting that it was defective insofar as it inaccurately illustrated the intended boundary between the application land and the property comprising Castle Bungalow.
11. The applicant, Carn Brea Parish Council, confirmed that it had not intended to seek the registration of any part of the Castle Bungalow land; indeed the map submitted with its application had not shown that. Yet it appears that the map prepared by Cornwall Council to accompany the notices transposed inaccurately the western boundary of the Castle Bungalow land so that it appeared as if a narrow strip was included in the application.
12. Although the map circulated with the notices wrongly showed land that was not included in the application, I am satisfied that the application does not include Castle Bungalow or any part of the objector's land there. The only party likely to have been prejudiced as a result of this is the party who drew the error to the attention of the Registration Authority. Having confirmed that the objector's land is not affected by this proposal, I see no need to reject this application on such a technicality, or to require the re-notification of all other parties in this case.
13. Another objector expressed concern about the proximity of the application land to Carn Brea Castle. The application plan showed the both the Castle and the car park excluded from the application land but the applicant subsequently clarified its intention by submitting a revised plan showing more clearly the extent of the area to be excluded from registration in this vicinity.
14. From my examination of the papers submitted I am satisfied the application is sufficient to meet the procedural requirements of sub-paragraph 4(6) of Schedule 2 to the 2006 Act.

Whether the land at issue is waste land of a manor

15. Waste land of a manor is regarded as being "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", a definition established in the case of *Attorney General v Hanmer*⁴.

⁴ *Attorney General v Hanmer* [1858] 2 LJ Ch 837

16. More recently, in 1990 the *Hazeley Heath case*⁵ confirmed that it is not necessary for the land to have remained part of a manor, and published guidance now acknowledges that, when establishing whether the land in question is manorial in origin, *"it is seldom possible to definitively prove that a particular parcel of land is of a manor. But it should be sufficient to show that, on the balance of probabilities, the land lies in an area which is recognised to have been, or still be, manorial, and that there is no convincing evidence to the contrary."*⁶
17. Here, the applicant has referred to several documents which it submits point to the land in question once having formed part of the waste lands of the Manor of Tehidy. This includes "A Plan of Part of the Manor of Tehiddy lying in the Parish of Illogan in the County of Cornwall" drawn up in 1737 by William Doidge, Surveyor. This records the enclosure "Carnbray" as being tenanted by "Samuel Ennys, Esq".
18. Extracts from local history books suggest that the boundary of the application land once enclosed a mediaeval deer park and that until the Civil Wars, it had been wooded. Several references are made to "Carnbraye", "Carnbree" and Carn Brea having been a part of the Manor of Tehidy as far back as 1566.
19. The sales particulars for "the off-lying portions of the Tehidy Estate", which was to be auctioned on December 14 1916, included Lot 368: "Carnbrea Hill". This was described as "An Important Historical Property" having Roman origins. This Lot comprised the Hill and the Castle, both held separately on a yearly tenancy, and the "Cottage and Garden" (Castle Bungalow) held leasehold. However, land does not cease to be waste merely because it is subject to a tenancy, lease or licence.
20. Amongst the information submitted by the applicant is the report of the Commons Commissioner who, in 1981, held a hearing into the provisional registration of the application land. In this, he referred to a number of conveyances relating to the land which convinced him that "the Unit land has at least up to the 1935 conveyance been "of the Manor of Tehidy"." Constraints on the interpretation of manorial land at that time resulted in the provisional registration being cancelled. However I find the historical evidence before me is unchallenged and displays clearly the manorial origin of the application land although not necessarily that it constituted waste.
21. Turning to the definition applied today, waste is regarded as land that is open, uncultivated and unoccupied. There is little doubt that the whole of the application land was, on the day of my visit, both open and uncultivated. The applicant confirmed that this was also the case at the time of the application and no evidence has been produced to challenge this.
22. On the question of occupation, one of the objectors points to the existence of active planning permissions for mineral extraction covering the site which date back to 1951. In the objection, it is submitted that the owner of the freehold interests in mines and minerals over a significant proportion of the application land may require to construct ventilation shafts on the land, and that the constraints that would follow if the land were to be registered as common land would be onerous. This may make the existing planning permissions difficult to

⁵ Hampshire County Council and others v Milburn [1990] 2 All ER 257

⁶ At paragraph 7.3.16; Guidance to commons registration authorities and PINS for the pioneer implementation Version 2.0 December 2014

implement fully or more expensive or potentially incapable of being implemented at all.

23. The published guidance⁷ makes clear that land does not cease to qualify as “unoccupied” unless there is some physical use which requires the exclusion of others. That does not appear to have been the case here. There may be plans to carry out works in the future but it is the description of the land at the time of the application that needs to be established. Since there are no works present on the land now, and none have been reported as being present in September 2013, I am satisfied that the application land was and is ‘unoccupied’ as defined in the relevant guidance.
24. There being no substantive evidence to the contrary, I conclude that the requirement in sub-paragraph (4)(2) of Schedule 2 that the land is waste land of a manor is satisfied in this case.

Whether the land at issue was provisionally registered as common land under Section 4 of the 1965 Act

25. The land was provisionally registered as common land (CL 332) on 8 October 1968 following an application (ref. 0724) by Camborne-Redruth Urban District Council (later Kerrier District Council) dated 25 June 1968.

Whether an objection was made to the provisional registration

26. One objection was lodged to the registration of the land, dated 23 June 1972, by Mrs Norma Mary Hill (reference X 1074) on the grounds that “the land (is) not common land”. This was recorded in the register on 12 September 1972

Whether the provisional registration was cancelled in the circumstances specified in paragraph 4(3)–(5)

27. The provisional registration was recorded as being cancelled on 21 July 1981 by direction of the Commons Commissioner dated 26 May 1981⁸ (reference 206/D/720).
28. Following a hearing, the Commissioner’s report recorded that “*the Disputed Area⁹ after the 1935 conveyance ceased to be “connected” to the manor of Tehidy and was therefore not within the definition. So my decision on this part of the matter is that the Disputed Area was not properly registered under the 1965 Act.*” He noted that he was “*bound by the words in section 22 of the 1965 Act which defines common land as “waste land of a manor” and also by the decision in re Box¹⁰ supra as to the meaning of this definition*”.
29. These are circumstances provided for by sub-paragraph 4(5) of Schedule 2 to the 2006 Act (as set out in my paragraph 7(c)(i) above).

Conclusion

30. Having regard to these and all other relevant matters raised in the written representations I conclude that, on a balance of probability, all the relevant criteria for registration of the application land as common land are satisfied.

⁷ At paragraph 7.3.14: Guidance to commons registration authorities and PINS for the pioneer implementation Version 2.0 December 2014

⁸ The Commissioner’s Report is dated 7 April 1981.

⁹ The Commissioners’ “Disputed Area” encompassed all the present application land.

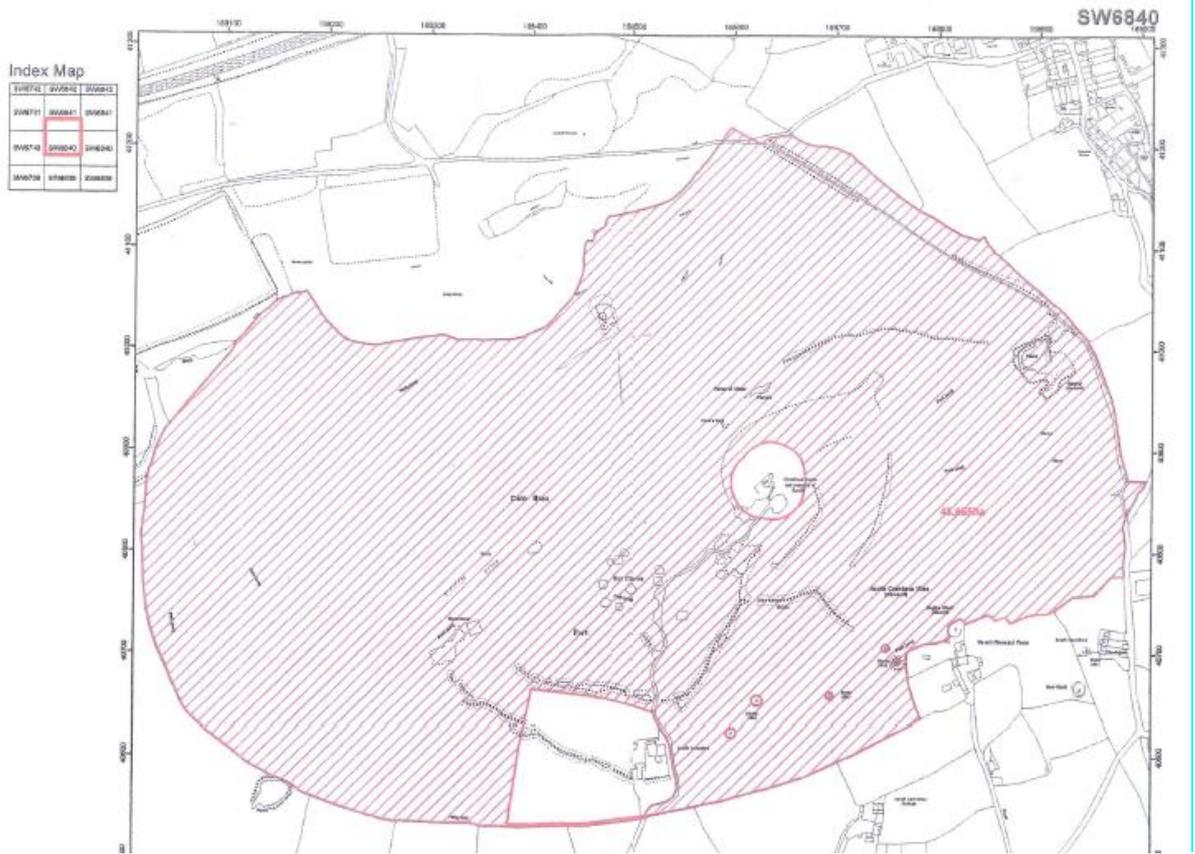
¹⁰ The Court of Appeal decided in 1978 in the case of Box Parish Council v Lacey that ‘waste land of a manor’ must still be in the ownership of the lord of the manor, but the court’s decision was subsequently overruled in 1990 by the House of Lords in the Hazeley Heath case (see paragraph 16 above).

Formal Decision

31. The application dated 11 September 2013 (as amended) is granted and the land edged and hatched in red on the revised plan submitted (by letter dated 10 April 2015) to accompany the application shall be added to the register of common land.

Sue Arnott

INSPECTOR



NOT TO ORIGINAL SCALE