
Application Decision

Hearing held on 30 April 2015

By Barney Grimshaw BA DPA MRTPI (Rtd)

An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs pursuant to Regulation 4 of The Commons Registration (England) Regulations 2008 to hold a Hearing and to determine the application.

Decision date: 10 June 2015

Application Ref: COM 619

Land at Bossulow Common, Parishes of Madron and Morvah, Cornwall

Register Unit: CL 257

Registration Authority: Cornwall Council

- The application, dated 11 October 2013 (but stamped as being received by Cornwall Council, the Commons Registration Authority (CRA), on 10 October 2013) is made under Schedule 2, Paragraph 4 of the Commons Act 2006 ("the 2006 Act").
- The application is made by David Coles on behalf of Save Penwith Moors.
- The application is to add land to the register of common land on the grounds specified in Paragraph 4 of Schedule 2 to the 2006 Act (Waste land of a manor not registered as common land).

Decision

1. The application is approved in part and the land edged red on the attached plan, except for the land also edged in purple and the land occupied by sections of the Class III public road from Morvah to Lanyon Road and the unclassified public road from Bosulow to Trehyllys Farm, shall be added to the register of common land.

Preliminary Matters

2. I held a public hearing into this application on Thursday 30 April 2015 at the Centre of Pendeen. I made an unaccompanied visit to the land referred to on Wednesday 29 April 2015.
3. I attach a copy of a plan showing the application land for reference purposes.

The Application Land

4. The application land is approximately 22.097 hectares in area. At present it is open heathland occupied by rough vegetation including furze, bracken, heather and rough grass. Roughly half of the land is owned by Mr R Green of Dakota Farm, part is owned by The National Trust and leased by Mr G Clegg, a smaller part was said at the hearing to be owned by Mr K Rowe and leased to Mr A Hichens as a part of Kerrow Farm and a further small area appears to be unregistered. The land is crossed by a main (Class III) road and an unclassified public road.

The Statutory Requirements

5. Paragraph 4(6) of Schedule 2 to the 2006 Act provides that any person may apply to the CRA to add land to the register of common land. The Commons Registration (England) Regulations 2014 (the 2014 Regulations) set out the procedures to be followed.
6. The application was made on 10 October 2013¹. The application has been made in accordance with the provisions of Paragraph 4 of Schedule 2 to the 2006 Act which provides that land can be added to the register of common land where:
 - (a) at the time of the application the land was waste land of a manor;
 - (b) the land was provisionally registered as common land under Section 4 of the Commons Registration Act 1965 (the 1965 Act);
 - (c) an objection was made in relation to the provisional registration; and
 - (d) the provisional registration was cancelled in one of a number of circumstances, the relevant one in this case being – 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).

The Application

7. The application has been made in accordance with the provisions of paragraph 4 of Schedule 2 to the 2006 Act and the CRA, has confirmed that the application has been processed in accordance with the regulations.

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

8. The land was provisionally registered as common land on 30 August 1968 (CL 257) following an application made by Major EH Marriott.

Whether an objection was made in relation to the provisional registration

9. An objection was made to the registration of the land as common on 18 September 1970 by FJ Lennox-Green, BI Green and W Marsden-Green on the grounds that the land was not common land at the date of registration.

Whether the provisional registration was cancelled

10. The provisional registration was cancelled on 21 July 1971 by order of a Commons Commissioner in the light of a request from the applicant that it be cancelled.

Whether at the time of the application the land was waste land of a manor

11. The applicant cites a number of references to the manorial history of the area which name various manors with land in Morvah and Madron parishes. From these it appears that the application land and much of the surrounding area was formerly manorial.
12. It is not disputed by other parties that the application land may well have been manorial in the past and I have seen no evidence to indicate that this was not

¹ For the purpose of remedying non-registration or mistaken registration under the 1965 Act, the application must be made on or before 31 December 2020.

the case. Accordingly, it is my view, on the balance of probability, that the land was formerly manorial.

13. Defra's published guidance² makes it clear that, as a result of the judgement in the *Hazeley Heath* case³, it is not relevant for these purposes whether the land continues to be held by the lord of the manor. The question therefore remaining to be answered is whether the land was waste land of the manor at the time of the application.
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*".
15. In the tithe apportionment of c.1840 that part of the application land within Morvah parish is listed as Trevowham Common and Trembath Common. The state of cultivation is described as being "*Turf*" and no rent charge is listed. The owner is given as Samuel Borlase and the occupants as "*Tenants in Common*". The area within Madron parish is listed as Busullow Common and the state of cultivation is "*Turbary*". Again no rent charge is referred to but a number of named owners and occupiers of the land are listed. The description of the use of the land for turf or turbary and the absence of any rent charge is consistent with the land having been 'waste' at the time. The basis upon which named individuals occupied the land in Madron parish is not known but it is possible that they were people having a right of common (turbary) over the land.

Open

16. Most of the application land is designated as open access land under the Countryside and Rights of Way Act 2000 although this does not in itself indicate that the land should also be regarded as being 'open' for the purposes of the 2006 Act.
17. On my visits I noted that the application land appeared generally open. The land is not fenced from the public roads which run through and adjacent to it, some of it is not separated from adjacent land by fencing or hedges and, where such fencing does exist, its purpose appears to be to enclose the adjacent land rather than the application land. Within the application land there are no fences on land ownership boundaries. I have seen no evidence to suggest that the situation was any different at the date of the application.
18. Overall, it is my view that the application land was 'open' at the date of the application.

Uncultivated

19. On my visit I saw little obvious indication of cultivation of the application land. It is argued on behalf of the applicants that cultivation should be taken to mean soil disrupting activities such as ploughing and/or the application of chemicals. However, on behalf of land owners and occupiers it is argued that any action that results in the natural vegetation of the land being changed should properly also be regarded as cultivation.

² Part 1 of the Commons Act 2006: Guidance to commons registration authorities and the Planning Inspectorate, Version 2, December 2014.

³ Hampshire County Council and others v Milburn.

⁴ Attorney General v Hanmer, 1858

20. With regard to the application, land it would appear that the only 'cultivation' that has taken place in recent years has been the removal of weeds such as ragwort and dock and controlled burning of some parts to control gorse and furze. It was also stated that a limited amount of grazing may have taken place at some time in the past using temporary fencing to contain livestock.
21. As there is no officially accepted definition of what constitutes cultivation for the purpose of the 2006 Act, it is necessary to consider each case individually and assess the degree of cultivation that has taken place. In this case, the amount of cultivation taking place at the time of the application appears to have been very limited and it is my view that, on balance, it is reasonable to describe the land as uncultivated for the purpose of 2006 Act.

Unoccupied

22. Defra's published guidance (already referred to, Para. 13) 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 or lease whose sole or principal purpose is to enable the land to be grazed. It also indicates that occupation requires some physical use of the land to the exclusion of others.
23. In this case, evidence of physical use of the application land is limited. Mr Green stated that he uses vehicles and machinery on the land to gain access to his farm and to maintain ditches, etc. He has also granted wayleaves or easements to utility companies and receives payment for them. Mr Clegg admitted that he had made little use of the land he leases to date.
24. The situation with regard to the relatively small area of application land leased by Mr Hichens appears somewhat different. He stated that the land forms the main access point to his farm for large vehicles and machinery. An area of hard standing is used for the storage of machinery, dung and silage, for the unloading of lorries too large to access the farm itself and for the transferring of bulk lime to a spreader. On my visit this area was occupied by a large pile of dung awaiting spreading on nearby fields. He also stated that a former occupier used the area for the grading and loading of potatoes. It is my view that these activities amount to occupation of the land for the purpose of the 2006 Act.
25. Mr Hichens also points out that there is also a stone monument on the land in memory of a cyclist who did on the road alongside and that his permission was sought and given for this.
26. Overall, it is my view that the application land, with the exception of the section occupied by Mr Hichens, was unoccupied at the time of the application in as much as it was not subject to any physical use to the exclusion of others.

Conclusion regarding whether the land is waste land of a manor

27. In the light of the above, it is my view that at the date of the application (10 October 2013) the application land, with the exception of that section occupied by Mr Hichens, had all the character of waste land in that it appeared open, uncultivated and unoccupied. In addition, there is no substantive evidence that the land was ever significantly different in character. Also, I have already concluded that the land was part of a manor. Accordingly, it is my view that, on the balance of probabilities, most of the application land was waste land of a manor at the time of the application.

Other Matters

28. Cornwall Council in its capacity as Highway Authority objects to the inclusion of the public roads, namely the Class III road from Morvah to Lanyon Road and the unclassified road from Bosulow to Trehyllys Farm, being included within the proposed common. I agree that it would not be appropriate for these roads to be registered as common land and do not propose to approve the application in so far as it applies to the roads. The applicants also indicated that they had no objection to the roads being excluded.

Conclusions

29. Having regard to these and all other matters raised at the hearing and in written representations I conclude that, on the balance of probabilities, all the criteria for the registration of the application land as common have been satisfied, with the exception of that land occupied by Mr Hichens and the public roads.

Formal Decision

30. The application is approved in part and the land edged in red on the attached plan, except for the land also edged in purple and the land occupied by sections of the Class III public road from Morvah to Lanyon Road and the unclassified public road from Bosulow to Trehyllys Farm shall be added to the register of common land.

Barney Grimshaw
INSPECTOR

APPEARANCES

Applicants

David Coles Save Penwith Moors

Ian Cooke Save Penwith Moors

Objectors

R Green Landowner

Guy Clegg Tenant of affected land

Ann Maidment Country Land and Business Association

Andrew Hichens Tenant of affected land

D Pollard Interested party

Commons Registration Authority

Martin Wright Commons Registration Officer, Cornwall Council

Mike Eastwood Access Team Leader, Cornwall Council

DOCUMENTS

1. CRA file of documents.
2. Applicants Statement and supporting documents.
3. Statement of R Green and supporting documents.
4. Statement of D Pollard.
5. Statement of A Hichens.

