

## Application Decision

Site visit made on 29 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: 24 June 2015**

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### **Application Ref: COM 646**

### **Part of Kerley Common, Chacewater, Cornwall**

Register Unit: CL 587

Registration Authority: Cornwall Council

- The application, dated 13 December 2013, is made under Schedule 2, Paragraph 4 of the Commons Act 2006 ("the 2006 Act").
  - The application is made by Tomas Hill.
  - 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).
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### **Decision**

1. The application is approved and the land shaded yellow on the plan attached to the application dated 13 December 2013 shall be added to the register of common land.

### **Preliminary Matters**

2. I made an unaccompanied visit to the land referred to on Wednesday 29 April 2015.
3. I attach a copy of the plan that was attached to the application for reference purposes.

### **The Application Land**

4. The application land is approximately 0.3888 hectares in area. At present it is not enclosed and is occupied by scrub vegetation.

### **The Statutory Requirements**

5. Paragraph 4(6) of Schedule 2 to the 2006 Act provides that any person may apply to the Commons Registration Authority (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 13 December 2013<sup>1</sup>. 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).
7. The CRA, Cornwall Council has confirmed that the application has been processed in accordance with the regulations.

### ***The Application***

8. It is not disputed that the application was properly made and I am satisfied that it was.

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

9. The land was provisionally registered as common land on 20 February 1970 (CL 587) following an application made by the Ramblers Association.

### ***Whether an objection was made in relation to the provisional registration***

10. Objections were made to the registration of the land as common on 24 September 1970 by Wheal Jane Ltd. and on 12 January 1971 by the Rt. Hon. George Hugh Viscount Falmouth on the grounds that the land was not common land at the date of registration.

### ***Whether the provisional registration was cancelled***

11. The provisional registration was cancelled on 16 September 1981 by direction of a Commons Commissioner at the request of the applicant.

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

12. The applicant states by reference to a history of Cornwall<sup>2</sup> that he believes the application land to have formed part of the ancient manor of Blanchland (sometimes recorded as Albalanda). The land was formerly in the parish of Kea which was described as lying within the extensive manor of Blanchland.
13. A court of survey or perambulation of the Manor of Blanchland, dated 1612, describes the limits of the manor within which the application land is included.
14. In the absence of any evidence to the contrary it is my view that it is most likely that the application land formed part of the Manor of Blanchland.

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<sup>1</sup> 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.

<sup>2</sup> Parochial History of the County of Cornwall, Vol II, 1868, William Lake

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15. Defra's published guidance<sup>3</sup> makes it clear that, as a result of the judgement in the *Hazeley Heath* case<sup>4</sup>, 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.
16. The term 'waste land of the manor' has been defined<sup>5</sup> 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". Further guidance with regard to what is meant by demesne lands is given in another judgement<sup>6</sup> to the effect that "*Upon creation of manors, the lord took as much as was for their own use into their demesnes, they distributed as much as was convenient amongst their tenants; what was left was called the lord's waste, which was neglected by the lord because he had before taken into his demesnes what he had need of*".
17. In the tithe apportionment for the parish of Kea in 1842, the application land is described as forming part of Kerling Common, owned and occupied by the Earl of Falmouth. There is nothing listed in the columns headed "*State of Cultivation*" or "*Amount of Rent-charge*", suggesting that the land was common and uncultivated.
18. At present the application land is unenclosed and occupied only by scrub vegetation. There is no evidence of any cultivation or of any management of the land by any person to the exclusion of others. I have seen no evidence of any occupation of the land and the application has not been opposed by any party.
19. In the light of the above, it is my view that at the date of the application (13 December 2013) the application land 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, the application land can be regarded as having been waste land of a manor at the time of the application.

## Conclusions

20. Having regard to these and all other matters raised I conclude that, on the balance of probabilities, all the criteria for the registration of the application land as common have been satisfied.

*Barney Grimshaw*  
INSPECTOR

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<sup>3</sup> Part 1 of the Commons Act 2006: Guidance to commons registration authorities and the Planning Inspectorate, Version 2, December 2014.

<sup>4</sup> Hampshire County Council and others v Milburn.

<sup>5</sup> Attorney General v Hanmer, 1858

<sup>6</sup> Potter v North (Sir Henry)

