



Application Decision

Site visit made on 2 February 2016

by Mark Yates BA(Hons) MIPROW

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

Decision date: 29/02/16

Application Ref: COM 735

Land at Trewellard Common, St Just, Cornwall

Register Unit: CL 699

Registration Authority: Cornwall Council

- The application, dated 31 March 2013, is made under paragraph 4 of Schedule 2 to the Commons Act 2006 ("the 2006 Act").
 - The application is made by Mr Coles on behalf of Save Penwith Moors.
 - The application is to register waste land of a manor as common land.
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Decision

1. The application is approved in part. The land outlined in red, with the exception of that land which is shown cross-hatched in red, on the first plan attached to this decision shall be added to the register of common land.

Preliminary Matters

2. Prior to undertaking the site visit on 2 February 2016, I heard oral representations from one of the objectors (Mr Rogers) in the presence of Mr Wright of the Cornwall Council at the Council's Offices in St Clare Street, Penzance. No other party wished to make oral representations in relation to this application. I was accompanied by Mr Rogers for part of the visit and by Mr Wright for the whole of my visit.
3. For the purpose of more easily identifying the relevant parcels of land, a second plan produced by the Council is also attached. All of the features referred to below correspond to those shown on this plan.
4. The application related to land known as Carn Eanes which is more clearly shown coloured red, green and violet on the plan. Following receipt of the application, the Cornwall Council, in its role as commons registration authority ("CRA") for the area, asked Mr Coles if he wished to add two additional parcels which had also been part of the cancelled provisional registration for register unit 699¹ (shown coloured blue on the plan). Mr Coles confirmed that he wished to add these parcels to his application. Further, in light of comments by the CRA, Mr Coles accepts that a portion of the land at Carn Eanes does not correspond to waste land of the manor (the violet land).

¹ By way of an email sent on 26 September 2013

5. There is no provision within the 2006 Act for the amendment of an application once it has been duly made. In respect of the violet land, there is no longer any support for it being registered as common land and the information supplied is not supportive of it falling within the definition of waste land of a manor. Therefore, I find that the application should not be approved in so far as it relates to this part of Carn Eanes.
6. In terms of the two parcels originally omitted from the application, Mr Coles could have submitted a revised application. However, they were included in the published notices and the notified parties had the opportunity to make a representation to the parcels being registered as common land. An objection has been submitted by Messrs J. and S. Trembath who claim to own the blue land. There is no evidence to suggest that the nature of the blue parcels of land have materially changed since the application was made. In the absence of anything to indicate that any party has been prejudiced by this matter it is reasonable to consider whether the land should be registered.
7. Three objections were submitted in response to the advertised application, from Mr Rogers, Messrs J. and S. Trembath and Mr Thurley. One person made a representation in support of the application (Mr Cooke²). The CRA also broadly supports this proposal, subject to the removal of the violet land. Mr Rogers confirmed during his oral representations that his objection only relates to the lower part of his land. This coincides approximately with the face of the quarry, located near to the annotation "0.617. ha" shown on the red land. It is apparent that Mr Thurley's main concern relates to the violet land, which I have addressed above. Nonetheless, from looking at Mr Thurley's objection, it would seem unsafe to assume that the registration of the green land is not opposed.
8. Mr Coles suggests that I should have regard to another case determined by an Inspector involving land nearby. However, I have proceeded on the basis that I need to consider this case on its own merits.

The Application Land

9. Having regard to the matters outlined above, the land to be considered now relates to approximately 2.283 hectares at Carn Eanes on the north-eastern side of Trewellard Common (the red and green land) together with two smaller parcels of approximately 0.338 and 0.085 hectares on the western side of Trewellard Common (the blue land).

Main Issues

10. The matters relevant to my decision, in respect of the land described above, is whether the land is waste land of a manor, at the date of the current application, and whether:
 - (a) the land was 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 the circumstances specified in sub-paragraphs (3), (4) or (5) of Schedule 2 to the 2006 Act.

² Co-ordinator of Save Penwith Moors

11. In this case, reliance is placed upon sub-paragraph (4) of Schedule 2 which provides that land may be added to the register of common land where:
- (a) the provisional registration was referred to a Commons Commissioner under Section 5 of the 1965 Act;
 - (b) the Commissioner determined that the land was not subject to rights of common and for that reason refused to confirm the provisional registration; and
 - (c) the Commissioner did not consider whether the land was waste of a manor.

Reasons

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

12. An application was made by St Just and Pendeen Old Cornwall Society³ to register the three parcels of land as common land. They were provisionally registered within the register unit CL 699 on 20 March 1970.

Whether an objection was made to the provisional registration

13. An objection to the above application was noted in the register of common land on 24 May 1972 (ref: X996). The stated ground of the objection being that the land was not common land at the date of registration. An additional objection in relation to the claimed rights of common over the land was noted in the register on 17 July 1972 (ref: X1012).

Whether the provisional registration was cancelled in the circumstances specified in sub-paragraph (4) of Schedule 2

14. A Commons Commissioner held a hearing into the provisional registration on 11 March 1975. The Commissioner stated in the decision that: "*There being no evidence in support of the application for this registration, the registration could only be confirmed if the registration in the Rights Section of the Register Unit were confirmed*". As the registration of the claimed rights of common was not confirmed, the Commissioner declined to confirm the registration of the land provisionally registered under unit CL 699 as common land.
15. The decisions were dated 15 April 1975 and were recorded in the relevant sections of the register of common land on 25 January 1977. There is nothing to suggest that the Commissioner considered whether the land was waste land of a manor.
16. I am satisfied that the circumstances of the cancellation of the provisional registration of the land correspond to those provided for by sub-paragraph (4) of Schedule 2 to the 2006 Act.

Whether the land has a manorial origin

17. Trewellard Common lies within the parish of St Just. Mr Coles says there is evidence of several manors within St Just and the Cornish Manors Gazetteer lists over a thousand manors within Cornwall. He believes it is inevitable that the whole of Cornwall was connected to a manor at some point in history. Mr

³ Received by the CRA on 30 December 1969

Coles submits that the land abutting Trewellard Common may have fallen within the manor of Trewellard.

18. Mr Coles says that the Cornwall and Scilly Historic Environment Record names four separate manors in the area, namely: Pendeen, Lower Boscaswell⁴, Bottallack and Trewellard. This document also makes reference to the former sixteenth century manor house within Trewellard. The location of the manor house is shown on a 1907 Ordnance Survey map as being to the west of Trewellard village. In addition, Mr Coles refers to a document of 1885 which is titled: "*Reference of the Manor of Trewellard in the Parish of St Just the property of Mrs Robyns and others*". Mr Cooke states that the West Penwith Resources website lists Trewellard as one of the manors in St Just. Whilst reference is made to a map showing the land to have been located within the area known Binnerton, its relevance cannot be determined from the information supplied.
19. Paragraph 7.3.16 of guidance published by the Department for Environment, Food and Rural Affairs⁵ ("the Guidance") acknowledges that "*It is seldom possible to prove definitively 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*". No evidence has been provided to suggest that the land is not of manorial origin. Whilst the supporting evidence provided is limited, I consider it to be sufficient to conclude on balance that the land was once part of a manor, probably but not necessarily the manor of Trewellard.

Whether the land is waste land of a manor

20. The definition of waste land of a manor arising from the case of *Attorney-General v Hanmer* [1858] is "*the open, uncultivated and unoccupied lands parcel of the manor other than the demesne lands of the manor*". Demesne land is land within a manor owned and occupied by the lord of the manor for his own purposes. For land to be occupied it is considered that there must be some exclusivity of physical use by a tenant or owner alone.
21. Mr Coles has provided an extract from a tithe map and accompanying apportionment for the parish of St Just⁶. It is not entirely clear to me what conclusions Mr Coles or Mr Cooke consider I should reach from these documents. An area of land shown on the tithe map as "*Boscaswell Higher Downs*" appears to encompass the land at Carn Eanes. This land is listed in the apportionment under the heading "*COMMONS AND WASTE IN BOSCASWELL*". This could be supportive of the land being waste land of the manor at the time. There are eight people listed as tenants in common and the stated use is heathy pasture.
22. The blue parcels may fall within the land known as Trewellard Common but I cannot be certain that this is the case. This land is described as heathy pasture and there is a named lessee. No rent charge is stated to be paid in respect of this land. The tithe documentation could possibly be supportive of the blue

⁴ It is not referred to as a manor in the extract highlighted by Mr Coles

⁵ Known as 'Part 1 of the Commons Act 2006: Guidance to commons registration authorities and the Planning Inspectorate' and issued in December 2014

⁶ Stated to originate from 1839 or 1841

parcels of land being viewed at the time as common. A strip of disputed land is shown on the tithe map between the two areas of common.

23. The tithe documents may well be supportive of the parcels of land falling within the common or waste land of the manor. However, paragraph 7.3.13 of the Guidance outlines the view that the question of whether land is waste land of a manor must be satisfied at the time the application is submitted. Therefore, I turn to the consideration of whether the land was open, uncultivated and unoccupied at the time of the application.

Open

24. Mr Coles makes reference to the definition of '*open country*' used by Natural England in relation to the designation of access land under the Countryside and Rights of Way Act 2000 ("the 2000 Act"). However, I am not convinced that this definition can be readily applied to the 2006 Act. Paragraph 7.3.14 of the Guidance states that open means unenclosed.
25. From my observations of the site it is clear that the majority of the boundaries of the land under consideration at Carn Eanes are fenced in relation to the surrounding land parcels. In respect of the red land owned by Mr Rogers, there is a wall on the north-eastern boundary which separates the land from a track. A new field gate exists in this boundary and there is a gap in connection with a public right of way which continues south westwards. There is a wall along the south-eastern boundary of Mr Rogers' land and the north-western boundary as far as the green land. The latter then follows the boundary of the green land. These parcels are designated as access land under the 2000 Act and are crossed by public rights of way.
26. The features described above correspond to those visible on an aerial photograph supplied by Mr Coles from the time of his application. They are also consistent with the available maps of the site. Mr Rogers purchased the red land in October 2013, which was after the application to register it as common land. Mr Rogers says he was informed that about four years before he purchased the land a fence had been renewed along the boundary with the green land and he believes this is borne out by evidence of posts in the undergrowth. There may well have been a period of time when fencing existed to demarcate the extent of the red land. However, any such period cannot be determined from the evidence. The evidence of Mr Rogers does not point to there being a fence in place at the time of the application.
27. There is a fence that generally follows the boundary between the violet and green land which has a relatively new appearance. It is possible that the fence may extend onto the green land at a particular point. However, it cannot be determined that this was the case at the time of the application.
28. Overall, I consider on balance that the boundaries in place are set against the red and green land rather than on the land. Therefore, I find the land involved to be of an open nature.
29. I encountered problems during the site visit in obtaining access to the two blue parcels of land. They are both designated as access land under the 2000 Act and abut registered common land. However, access to the parcel nearest to Trewellard Road was not possible due to the nature of the covering vegetation from the east. There are other points where land attached to properties is situated between this parcel and the highway. In respect of the other parcel,

this was again inaccessible due to vegetation. It was nonetheless possible to observe some of the land from the track that leads into it from the north. There was a gate in place at the northern entrance to the land but a proportion of the boundaries to the west and east could be seen.

30. There is nothing to suggest that the parcels are enclosed in their entirety bearing in mind they are designated as access land. This is supported to some extent by the aerial photographs of 2013. In addition, nothing is apparent from these photographs to indicate that the land was not of an open nature. On this basis, I conclude on balance that the blue parcels are open for the purpose of my decision.

Uncultivated

31. Mr Rogers acknowledged in his oral representations that when he purchased the land it was in a poor condition and he has subsequently cleared the lower part of the site and this was evident during my visit. He says that he has also removed approximately 30 tonnes of stone from the land. It is apparent from the evidence of Mr Coles and Mr Rogers that the clearance of the land occurred after the date of the application and this is borne out by the 2013 aerial photograph. This shows the lower part of his land to be similar in nature to the remainder of the red land and the green land. It was clear from my visit that the upper part of the red land and the green land are both uncultivated. In respect of the former, I note from the Land Registry records that there is a covenant to the effect that no part of this land shall be cultivated or developed.
32. From what I could see during my visit and the aerial photographs provided it is apparent that the blue parcels are uncultivated.

Unoccupied

33. Mr Rogers referred in his oral representations to the red land being used to keep pigs in the past, the existence of a hut used by the home guard and people removing stone from the land. Paragraph 7.3.14 of the Guidance makes it clear that occupation requires some physical use of the land to the exclusion of others. There is no evidence to indicate that any of the parcels of land were occupied to the exclusion of others at the time of the application. In the circumstances, I conclude that the land is unoccupied.

Conclusion

34. In light of the above, I conclude that, at the time of the application, the land had the character of waste land of a manor in that it was open, uncultivated and unoccupied.

Other Matters

35. Mr Coles draws attention to the land being designated as an Area of Outstanding Natural Beauty, area of Great Historic Value and located within the St Just Mining Area World Heritage Site. However, these designations have no bearing on my decision. Nor indeed are some additional matters raised by Mr Coles, including the benefits for the public of the land being registered and the impact on the use of the land.
36. I also note the concerns raised by Mr Rogers regarding the need to obtain consent for particular works should the lower part of his land be registered as

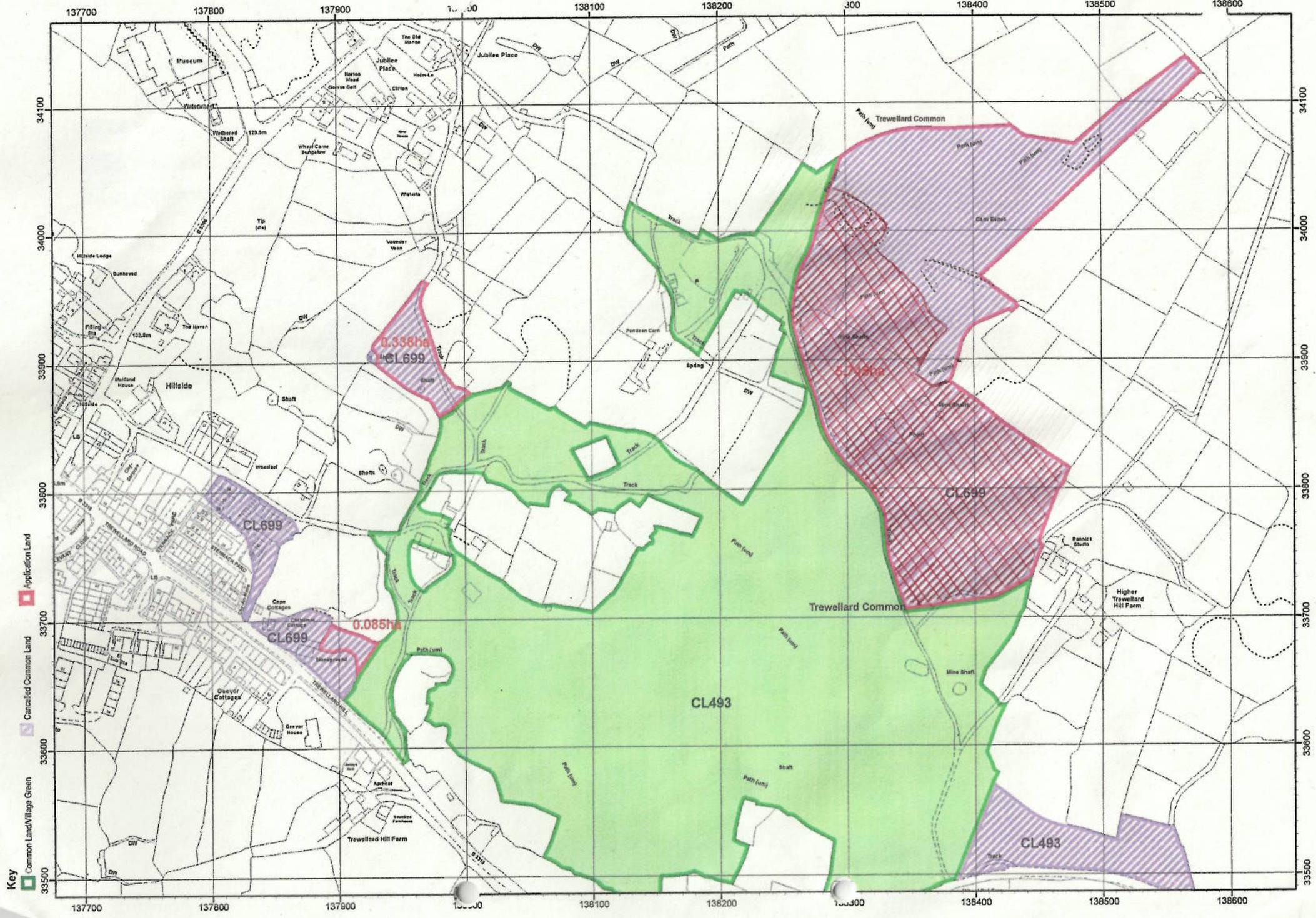
common land. Whilst I appreciate his concerns, this is again something that is not material to my decision.

Overall Conclusion

37. Having regard to these and all other matters raised in the written representations I conclude, on the balance of probabilities, that the relevant criteria for the registration of the red, green and blue parcels of land as common land are satisfied.

Mark Yates

Inspector



Key

Common Land/Village Green

Cancelled Common Land

Application Land

