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# Application Decision

Hearing held on 9 March 2016

**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: 25/04/16**

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## **Application Ref: COM 744**

### **Land at 'The Fozen' or Tregurrian Common, Newquay, Cornwall**

Register Unit: CL 233 & 379(part)

Registration Authority: Cornwall Council

- The application, dated 14 July 2015 is made under Schedule 2, Paragraph 4 of the Commons Act 2006 ("the 2006 Act").
  - The application is made by Mark Perkins on behalf of Tregurrian Action Group.
  - 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.

## **Preliminary Matters**

2. Initially this application was to be determined on the basis of written representations and a visit to the site in the company of interested parties. However, the applicants requested the opportunity to also make oral representations, as was their right. It was therefore arranged for a hearing to be held to which other parties would also be invited to attend so that they would have the opportunity to comment on any new evidence referred to.
3. Accordingly, I held a public hearing into this application on Wednesday 9 March 2016 at Newquay Town Hall. I made an accompanied visit to the land referred to after the hearing on the same day.
4. I attach a copy of a plan showing the application land for reference purposes.

## **The Application Land**

5. The application land is approximately 0.171 hectares in area. It is lower in the central part where there is a pond, at present the whole area is very overgrown with willow, brambles and other vegetation.

## **The Statutory Requirements**

6. 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.

7. The application was made on 14 July 2015<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 Application***

8. 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***

9. The land was provisionally registered as common land on 5 August 1968 (CL 233) and 1 November 1968 (CL 379) following an application made by Mr J C Faulkner and Mrs M Faulkner.

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

10. Objections were made to the registration of the land as common on 16 January 1972 by Mr SD Young-Jamieson, on 25 July 1972 by AJ & LML Billing and on 25 July 1972 and 25 September 1972 by Mrs JE Pankhurst 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 23 August 1973 after the applicants agreed to withdraw the application.

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

12. The applicants state that the land was once part of Carnanton Estate. Carnanton is one of a number of manors in the area recorded on a list provided by the CRA and it is stated on behalf of Mrs T Young-Jamieson of Carnanton Estate that the application land is still in the ownership of the Estate.
13. It is not disputed by other parties that the application land was manorial in the past and I have seen no evidence to indicate that this was not the case. Accordingly, it is my view, on the balance of probability, that the land was manorial.
14. Defra's published guidance<sup>2</sup> makes it clear that, as a result of the judgement in the *Hazeley Heath* case<sup>3</sup>, it is not relevant for these purposes whether the land

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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> Common land: guidance for commons registration authorities and applicants, November 2015.

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.

15. The term 'waste land of the manor' has been defined<sup>4</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*".

#### *Open*

16. On my visit I noted that the application land was surrounded by fencing. This consists of wooden posts linked by two thin wooden rails for the most part or two strands of wire along much of the north-western boundary. There were two narrow gaps wide enough for a person to pass through where the fence did not join fences of neighbouring properties. There were also two wider gaps, one adjoining the road in the eastern boundary closed by an unlocked gate and one in the south-western boundary which appears to have been intended for another gate but was closed only by a single low rail which could easily be stepped over.
17. I was informed at the hearing that the fence had been largely erected in June 2015 and this is what had triggered the application for the land to be registered as common. It was stated that the fencing was not complete on the date of the application (14 July 2015) and that, in particular, neither of the gaps left for gates had been closed in any way. On behalf of the CRA it was stated that it was understood that the purpose of the fencing was to try and prevent further encroachment from neighbouring properties, the owners of which had already incorporated some of the land which had been provisionally registered as common into private gardens. There was no evidence to suggest that the land had ever been fenced before June 2015.
18. Thus, although the application land was largely fenced at the time of the application, it was not completely enclosed and public access to it on foot was still available. In addition, the nature of the fencing is such that it would not be effective in keeping livestock in or in preventing public access. It would appear that the main purpose of the fencing may well have been to mark the ownership boundary rather than to exclude access by people other than the owners.
19. In these circumstances it is my view that the land can still reasonably be regarded as 'open' at the date of the application for the purpose of the operation of the 2006 Act.

#### *Uncultivated*

20. On my visit I saw no indication of cultivation of the application land which is very overgrown. In addition, no evidence of cultivation of any sort having taken place was put forward. It is therefore my view that the land should be regarded as uncultivated for the purpose of 2006 Act.

#### *Unoccupied*

21. The application land does not currently appear to be used or occupied in any way. It was stated at the hearing that in the past a pond in the centre of the

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<sup>3</sup> Hampshire County Council and others v Milburn.

<sup>4</sup> Attorney General v Hanmer, 1858

land was used for watering stock belonging to various local people (not just the landowner) but such use ended many years ago.

22. It seems clear that the land was unoccupied at the time of the application.

*Conclusion regarding whether the land is waste land of a manor*

23. In the light of the above, it is my view that at the date of the application (14 July 2015) the application land was waste land of a manor.

### **Other Matters**

24. At the hearing it became clear that a major concern of supporters of the application and those objectors who were present was the possibility that the application land might become subject to pressure for development of some sort in the future. Whilst I understand this concern, it is not a matter that should be given any weight in the determination of the application and I have not afforded it any in reaching my decision.

### **Conclusions**

25. 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.

### **Formal Decision**

26. The application dated 14 July 2015 is approved and the land hatched in blue on the attached plan shall be added to the register of common land.

*Barney Grimshaw*

INSPECTOR

## **APPEARANCES**

### **Applicants**

Mark Perkins	Tregurrian Action Group
Pam Anstee	Tregurrian Action Group
Judi Stratford	Local resident
John Fitter	Cornwall Councillor
Joanna Kenny	Cornwall Councillor

### **Objectors**

Andrew Smart	Adjacent landowner
Nick Smart	Adjacent landowner

### **Interested party**

Sue Ansell

### **Commons Registration Authority**

Martin Wright	Commons Registration Officer, Cornwall Council
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## **DOCUMENTS**

1. CRA file of documents.
2. List of Manors in Mawgan In Pydar (Cornwall Council).

