
Application Decision

Site visit made on 20 November 2013

by Heidi Cruickshank BSc MSc MIPROW

Appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 17 December 2013

Application Ref: COM 459

Chycowling Common, Quenchwell, Carnon Downs, Cornwall

Register Unit No: CL594¹

Commons Registration Authority: Cornwall Council

- The application, dated 21 September 2012, is made under paragraph 4(5) of Schedule 2 of the Commons Act 2006.
 - The application is made by Mr T Hill.
 - The application is to register waste land of a manor in the register of common land.
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Decision

1. Consent is granted in accordance with the application dated 21 September 2012 and the plan submitted with it. The land coloured yellow on the plan attached to this decision shall be added to the register of common land.

Procedural Matters

2. No objections were received to the advertisement of the application. No-one requested to be heard with respect to this application and so I made an unaccompanied site inspection. The evidence was dealt with on the basis of the written representations on the file.

The Application Land

3. The land comprises approximately 0.213 hectares, known as Chycowling Common, lying on the southern side of the road from Grenna Lane to Chyreen Lane, opposite The Palms, Quenchwell, Carnon Downs in the Parish of Kea.

Main Issues

4. The application has been made in accordance with the provisions of paragraphs 4(2) and (5) of Schedule 2 to the Commons Act 2006 ("the 2006 Act"). There is no indication that the requirements of the 2008 Regulations have not been met and the application has been accepted and submitted to The Planning Inspectorate by Cornwall Council ("the Council") as the Commons Registration Authority.
5. The main issue is whether the land is waste land of a manor and whether before 1 October 2008:
 - a) the land was provisionally registered as common land under section 4 of the Commons Registration Act 1965 ("the 1965 Act");

¹ Original common land register number

- 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). Sub-paragraph (5), on which the applicant relies, requires 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).
6. The onus of proving the case in support of the correction of the register of common land rests with the person making the application, and the burden of proof is the normal, civil standard, namely, the balance of probabilities.

Reasons

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

7. In the case of *Attorney General v Hanmer (1858)*, waste land of the manor was defined as "the open, uncultivated and unoccupied lands parcel of the manor other than the demesne lands of the manor". "Of the manor" was held to mean land which is or was formerly connected to the manor, *Hampshire County Council and others v Milburn (1991)*.
8. The applicant indicated that the land formed part of the Manor of Blanchland² and referred to Lake's Parochial History of the County of Cornwall, 1868, as well as other documents. He drew my attention to a document held in the Cornwall Records Office which relates to "...a Court of survey or perambulation held for y^e manor of Blanchland 23 of May 1612 by several of ye Ten^{ts} of y^e s^d manor the Limits or Bounds of s^d manor are thus describ^d ...". This describes the bounds of the manor and the applicant states that the application land is included within this area.
9. The Tithe Commutation Act 1836 (as amended by the Tithe Act Amendment Act, 1837) converted tithes (the tenth part of the annual produce of agriculture), provided for the support of the priesthood and religious establishments, into a tithe rent-charge, a monetary payment based on the seven year average price of wheat, oats and barley. This was normally done parish by parish and resulted in some 12,000 documents which apportioned the payment fairly over the different lands in the tithe district. The apportionment of tithes was recorded in a schedule and on a map.
10. Tithe documents are solely concerned with identifying titheable land. Apportionments are statutory documents which were in the public domain and tithe maps have been treated by the courts as good evidence as to whether land was titheable or not. There are a number of reasons why land might not have been subject to tithe, for example if the land was barren, held either by the church or some other religious community, or land which had only recently been converted to productive land from previous barren heath or waste land.
11. Where tithe maps are shown to have been based on earlier parish or estate maps, they may have evidential value relating to the purpose for which they were originally produced. It has not been clarified whether this tithe map

² Sometimes recorded as Albalanda

- was based on an earlier map or newly prepared, nor whether it was a first or second class map. Both have been accepted by the courts as evidence.
12. The extract of the 1842 tithe map for the parish of Kea shows the application land identified as a separate land parcel, numbered 3993. The tithe apportionment records this as being in the ownership of the Earl of Falmouth, described as "*Common*" and the "*State of Cultivation*" is given as "*Waste*". No tithe was payable on this land.
 13. Bearing in mind the purpose of the tithe documentation, referred to above, I consider that this provides strong evidence that the land was part of the manor occupied by the Earl of Falmouth, recognised as common land and waste land of that manor.
 14. It is seldom possible to prove definitively that a particular parcel of land is of a manor. Taking account of the above, and other information given, I consider it has been shown sufficiently, on the balance of probabilities, that the land lies in an area which is recognised to have been manorial. There is no convincing evidence to the contrary.
 15. I am also satisfied, on the balance of probabilities, that the land has been identified as waste land. The remaining point is therefore whether the land was waste land of the manor at the time of the application, September 2012.
 16. A sales catalogue, apparently dating from 13 September 1920, relates to Lots in the Parishes of Kea and Feock. The land is part of Lot 22 "*A Small Holding at Halleggo*" and identified as Pt 3738, which is listed as "*Waste*", subject to a right of way over the track in favour of the owners and occupiers of adjoining land. The Land Registry Official copy of register of title for title number CL214652, which includes this land, shows that the land was purchased on 22 December 1920 by Thomas Woolcock.
 17. I note that the description given in the register of common land, date of entry 24 February 1970, indicated that this was a "*...piece of waste land...*".
 18. In response to the advertisement of the current application the Open Spaces Society and the Ramblers' Association ("the RA") both responded positively. The RA representative indicated that he had known the area since 1987 and regarded some of it as probably highway verge, being open to the road. It had generally been vegetated by larger trees with an understory of bramble and similar species and no cultivation or agricultural use had taken place.
 19. On my site visit I noted that the application land appeared open and uncultivated, with no evidence of active management having been undertaken recently. There was an unmetalled track leading between the road and a field to the south approximately in the centre of the land. I do not consider that a private field access route is incompatible with the registration of land as common. To the west of this, along the southern boundary of the land, there was also what appeared to be a sunken track or ditch, running to the road near the railway bridge. Neither of these features were separated from the land as a whole.
 20. The application land was open to the road to the north and there was no indication that it was occupied by any party to the exclusion of others. It appeared to me that the land was unaltered from the descriptions of it given in 1842, 1920, 1970 and from 1987. Paragraph 4(2) of Schedule 2 to the

2006 Act states that it "...applies to land which at the time of the application under sub-paragraph (1) is waste land of a manor..." and I am satisfied that at the date of the application, 21 September 2012, the land had the character of waste land in that it appeared open, uncultivated and unoccupied. There is no substantive evidence that the land was ever significantly different in character, for example developed, improved or brought in hand.

21. The Department for Environment, Food and Rural Affairs takes the view that the question of whether land is waste land of the manor is one which must be satisfied at the time the application is determined. I consider that the land satisfied the test at the date of my site visit.

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

22. This land was provisionally registered as unit number CL594 following an application made by the RA. The application, dated 31 December 1969 and received by the Council on 2 January 1970, reference 2090, seems to have been properly made under section 4 of the 1965 Act, such that this requirement is met.

Whether an objection was made to the provisional registration

23. An objection, reference X732, was made to the registration of the land as common on 12 January 1971 by the Rt Hon George Hugh Viscount Falmouth, Tregothnan. The grounds of the objection were that the land was not common land at the date of registration.

Whether the provisional registration was cancelled as set out in sub-paragraph (5)

24. The provisional registration was subject to a hearing held by a Commons Commissioner in July 1980. The decision, Reference No. 206/D/778 dated 12 August 1980, shows that the registration was cancelled under the 1965 Act. The reason for the refusal to confirm the registration was that the parties had signed a written request that confirmation of the registration be refused.
25. The RA were the applicants and had signed the request referred to, thus fulfilling the requirements of paragraph 4(5) of Schedule 2 to the 2006 Act.

Conclusion

26. Having regard to these and all other matters raised in the written representations, I conclude that, on the balance of probabilities, the criteria for the registration of the application land as common land under paragraph 2(4) of the Schedule 2 to the 2006 Act have been met.

Heidi Cruickshank

Inspector

