



Application Decision

Site visit held on 7 August 2012

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 site visit and to determine the application.

Decision date: 18 September 2012

Application Ref: COM 322

Land known as Rame Common, Parish of Wendron, Cornwall

Registration Authority: Cornwall Council

- The application, dated 5 January 2010, is made under Schedule 2, Paragraph 2 of the Commons Act 2006 ("the 2006 Act").
- The application is made on behalf of Wendron Parish Council.
- The application is to add land to the register of common land on the grounds specified in Paragraph 2 of Schedule 2 to the 2006 Act (Non-registration of common land).

Summary of Decision: The application is granted.

Preliminary Matters

1. I made a site visit to the application land on Tuesday 7 August 2012 accompanied by Mr CFP Chapman, Clerk to Wendron Parish Council and Mr T Hill, Cornwall Council, the Commons Registration Authority (CRA).

The Application Land

2. The application land now comprises 12.462 hectares of land. Originally the registration of a slightly larger area was sought but the applicant subsequently withdrew the application in respect of an area of just over 900 square metres at the south-west corner of the site which is currently occupied by Cornwall Council as a storage area for roadway resurfacing materials. I attach a plan showing the land originally applied for and the area now withdrawn from the application.
3. The land is unenclosed and occupied by rough scrubland vegetation. No owner of the land has been identified despite extensive research on the part of Wendron Parish Council. Since 2001, the parish council has publicised the fact that it has taken possession of the land and would be carrying out minimal maintenance in the interests of local people.

The Statutory Requirements

4. Paragraph 2(3) 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 2008 (the 2008 Regulations) set out the procedures to be followed.
5. The application is dated 5 January 2010¹. The application has been made in accordance with the provisions of Paragraph 2 of Schedule 2 to the 2006 Act which provides that land can be added to the register of common land where:
- (a) it was not at any time finally registered as common land or as a town or village green under the 1965 Act;
 - (b) the land is:
 - (i) regulated by an Act made under the Commons Act 1876 (c. 56) confirming a provisional order of the Inclosure Commissioners;
 - (ii) subject to a scheme under the Metropolitan Commons Act 1866 (c. 122) or the Commons Act 1899 (c. 30);
 - (iii) regulated as common land under a local or personal Act; or
 - (iv) otherwise recognised or designated as common land by or under an enactment;
 - (c) it is land to which this Part applies; and
 - (d) it satisfies such other conditions as regulations may specify.
6. An application must be made in accordance with the 2008 Regulations. Paragraph 16 of the 2008 Regulations requires that an application must –
- (a) be made in writing on a form provided by the CRA to which the application is made; and
 - (b) be signed by, or by a representative of, every applicant who is an individual, and by the secretary or some other duly authorised officer of every applicant which is a body corporate or an unincorporated association.
7. In addition, Paragraph 14 of Schedule 4 to the 2008 Regulations requires that an application under Paragraph 2 of Schedule 2 to the 2006 Act must include –
- (a) a description of the land to which the application applies; and
 - (b) evidence of the application of that paragraph as described in paragraph 2(2) of Schedule 2, to the land to which the application relates;
 - (c) a copy of any enactment or scheme referred to in paragraph 2(2)(b) of Schedule 2, by which the land to which the application relates is regulated, recognised or designated, or to which it is subject.
8. 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.

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.

Reasons

9. The application is made on the basis that the land has always been known as Rame Common and is recognised as common in the Tithe Award of 1844.
10. It is not disputed that the application was properly made and I am satisfied that it was.
11. The application land is not registered as common land or as a town or village green and there is no evidence that it ever has been.
12. There is no evidence that the application land is regulated by an Act under the Commons Act 1876, subject to a scheme under the Metropolitan Commons Act 1866 or the Commons Act 1899, or regulated as common land under a local or personal Act. In these circumstances, approval of the application depends on whether it relates to land which is *"otherwise recognised or designated as common land by or under an enactment"*².
13. Although the Tithe Award for the area is not in itself an enactment, it would have been made under the Tithe Commutation Act 1836. The map relating to the award shows all of the application land as being included in plot no. 3054. The accompanying Apportionment then describes this land under the heading *"Wastes"* simply as Rame Common and records no rent as being payable in respect of the land. I have no evidence to suggest that the status of the land has changed since the time of the Tithe Award.
14. No objections were made to the application to register the land as common.
15. In the light of this, it is my view that the application land was recognised as common land in the Tithe Award of 1844 which was made under the Tithe Commutation Act 1836 and that it has remained common land since then.

Conclusions

16. Having regard to these and all other matters raised 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

17. The application is granted and the land outlined in green on the attached plan, with the exception of the hatched area in the south-west corner, shall be added to the register of common land.

Barney Grimshaw

INSPECTOR

² Commons Act 2006, Schedule 2, paragraph 2(2)(b)(iv).

