



Application Decision

Site visit made on 5 February 2013

By Sue Arnott FIPROW

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

Decision date: 06 March 2013

Application Ref: COM 412

Land at Ebenezer Triangle, Parishes of Grade-Ruan and Landewednack, Cornwall

Register Unit: CL 647

Registration Authority: Cornwall Council

- The application, dated 20 April 2012, is made under paragraph 4(6)(a) of Schedule 2 to the Commons Act 2006 ('the 2006 Act').
- The application is made by Mr T D J S Hill.
- The application is to register waste land of a manor as common land in the register of common land.

Summary of Decision: The application is granted.

Preliminary Matters

1. A public notice of the application appeared in the 19 July 2012 edition of *The West Briton* newspaper, on Cornwall Council's website and was displayed on the application land for the appropriate statutory period. Notice was also served on interested parties as required. Two representations were submitted, neither of which raised objections to registration of the land.
2. To assist me in determining the application I visited the site on 5 February 2013. No party expressed a wish to be present and I therefore inspected the land unaccompanied.

The Application Land

3. The application land, known as 'Ebenzers Triangle', lies at the junction of the A3083 road from Helston to The Lizard and Ebenezer Road to Ruan Minor. The majority lies in Grade-Ruan parish (formerly Ruan Minor) with a lesser area within Landewednack parish. It comprises approximately 5.695 hectares of predominantly unbounded, open heathland. The land is owned by Natural England, the majority of it under freehold. Current designations applied to this site include Site of Special Scientific Interest and Special Area of Conservation; it forms part of The Lizard National Nature Reserve and lies within the Cornwall Area of Outstanding Natural Beauty. In addition it is recorded as open access land under the Countryside and Rights of Way Act 2000.

The Statutory Requirements

4. Paragraph 4(6)(a) of Schedule 2 to the 2006 Act provides that any person may apply to the commons registration authority to register waste land of a manor

as common land in the register of common land. The Commons Registration (England) Regulations 2008 (the 2008 Regulations) set out the procedures to be followed.

5. The application was made on 20 April 2012¹. The application form indicates that it has been made in accordance with the provisions of paragraph 4 of Schedule 2 to the 2006 Act which provides that an application can be made where the land at issue is waste land of a manor and where before 1 October 2008:
 - (a) the land had been provisionally registered as common land under section 4 of the Commons Registration Act 1965;
 - (b) an objection was made in relation to the provisional registration; and
 - (c) the provisional registration was cancelled in any of the following circumstances:
 - (i) the provisional registration was referred to a Commons Commissioner under section 5 of the 1965 Act and the Commissioner had determined that although the land had been waste of the manor at some earlier time, it was not such land at the time of the determination because it had ceased to be connected with the manor and for that reason only the Commissioner refused to confirm the provisional registration;
 - (ii) the provisional registration was referred to a Commons Commissioner under section 5 of the 1965 Act and the Commissioner had determined that the land was not subject to rights of common and for that reason refused to confirm the provisional registration and the Commissioner did not consider whether the land was waste of a manor;
 - (iii) the person on whose application the provisional registration had been made requested or agreed to its cancellation (whether before or after its referral to a Commons Commissioner)
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 registration authority 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 of 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 4 to 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 paragraph 4(2) of Schedule 2 to the 2006 Act to the land to which the application relates.

¹ For the purpose of remedying non-registration or mistaken registration under the 1965 Act, the application must have been made on or before 31 December 2020.

Reasons

The Application

8. Neither of the two representations nor the Registration Authority (Cornwall Council) dispute that the application was properly made and the required statutory procedures followed. From my examination of the papers submitted I have no cause to doubt that to be the case. I am satisfied the application is sufficient to meet the procedural requirements of sub-paragraph 4(6) of Schedule 2 to the 2006 Act.

Whether the land at issue is waste land of a manor

9. Waste land of a manor is regarded as being "the open, uncultivated and unoccupied lands parcel of the manor other than the demesne lands of the manor", a definition established in the case of *Attorney General v Hanmer*².
10. The description of the application land as unenclosed and uncultivated is not disputed. Other than fencing in the north eastern corner around land associated with Ebenezer Cottage, the site is open to the three public roads which surround it. It is clear that none of the land is cultivated, it consisting mostly of gorse, heather and scrub, but Natural England considers it to be 'occupied' insofar as management of the site requires occasional cutting and burning of the heathland vegetation for the purposes of nature conservation. Having regard to the published guidance, I do not consider that periodic management of this nature amounts to occupation of the land in this context.
11. In support of his submission that the land in question is manorial in origin, the applicant highlights the published guidance which acknowledges that "*it is seldom possible to definitively prove 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.*"³
12. On the basis of his research the applicant submits that the land in question constitutes waste land of the Manor of Tretheves, Lucies and Rosewick. A reference to this manor in Magna Britain traces it back to ancient times and follows possession from the Reskymer family in 1620, to the Bellots then to the Robinsons in 1704. From Mr Fonnereau, to whom the manor was alienated, it was sold to Sir Christopher Hawkins. The applicant has provided a description from the archived deeds relating to the mortgage of these lands (including all commons) in 1787 and redeemed in 1790.
13. The tithe records⁴ for Ruan-Minor and Landewednack each listed the two parcels which now form the application land respectively as "roads and wastes" and ("uncultivated") "common", the owner being "Hawkins Christopher Henry Thomas Esq".
14. Indeed it appears the Hawkins family, through the Trewithen Estate, retained the land until the twentieth century. The applicant has provided copies of sales documents indicating it was offered for sale in 1831 and much later in 1947.

² *Attorney General v Hanmer* [1858] 2 LJ Ch 837

³ At paragraph 9.2.14; Guidance to applicants in the pilot implementation areas Version 1.22 September 2011; repeated at paragraph 9.3.16; Guidance to commons registration authorities and PINS for the pioneer implementation Version 1.43 September 2011

⁴ For which no date is given but these are presumed to be from the mid-nineteenth century. Copy extracts have not been supplied.

15. There is no evidence to counter the quite reasonable conclusion that at one time the application land formed waste land of the Manor of Tretheves, Lucies and Rosewick. It is not necessary to show that is still the case. Consequently I find that the application land is of manorial origin and that it has the character of waste land in that it is open, uncultivated and unoccupied.

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

16. The land was provisionally registered as common land (CL 647) on 6 February 1970 following an application (ref. 1830) by Grade-Ruan Parish Council made on 15 December 1969.

Whether an objection was made to the provisional registration

17. An objection to the registration of the land dated 26 August 1970 by the Trewithen Estate (reference X272) was recorded in the Register on 12 March 1971; the grounds for the objection were that the land was not common land at the date of registration.

Whether the provisional registration was cancelled in the circumstances specified in paragraph 4(3)–(5)

18. The provisional registration was recorded as being cancelled on 21 July 1981 after a hearing held by a Commons Commissioner who refused to confirm the registration on the basis of a letter dated 20 September 1980 signed by the Clerk of Grade-Ruan Parish Council (the applicants) stating that his Council wished to withdraw its application for the registration of the land.
19. These are circumstances provided for by sub-paragraph 4(5) of Schedule 2 to the 2006 Act (as set out in my paragraph 5(c)(iii) above).

Other matters

20. The map accompanying the application shows the application land excludes the curtilage of Ebenezer Cottage. Indeed my inspection of the site confirmed that this does appear to be occupied and would therefore fail to meet the criteria for registration as described above had it been included. It is debateable whether a part of this curtilage lay within the area provisionally registered as CL 647 but the small scale of the associated maps leaves the question unanswered. Whilst I note that Natural England queried the boundary of the application land in this vicinity, I am satisfied that the area identified in the application does meet the statutory criteria for registration.

Conclusion

21. Having regard to these and all other matters raised in the written representations I conclude that, on a balance of probability, all the relevant criteria for registration of the application land as common land are satisfied.

Formal Decision

22. The application dated 20 April 2012 is granted and the land highlighted in yellow on the plan submitted with the application shall be added to the register of common land.

Sue Arnott

INSPECTOR

