
Application Decision

By Martin Elliott BSc FIPROW

An Inspector appointed by the Secretary of State pursuant to Regulation 4 of The Commons Registration (England) Regulations 2008 to determine the application.

Decision date: 11 September 2013

**Application Ref: COM 487
CHEESEWRING COMMON, CORNWALL**

Register Unit: CL131

Registration Authority: Cornwall Council

- The application, dated 12 February 2013, is made under paragraph 7 of Schedule 2 to the Commons Act 2006 ('the 2006 Act').
- The application is made by Mr and Mrs Skoyles.
- The application is to remove land from the register of common land on the grounds specified in Paragraph 7 of Schedule 2 to the 2006 Act (land wrongly registered as common land).

Decision

1. The application is refused.

Preliminary Matters

2. My decision is based on the written submissions contained on file. I have not visited the site but am satisfied that I can make a decision without the need to do so. No objections have been raised to the application.
3. From my examination of the Commons Register it was apparent that the provisional registration of CL131 was referred to a Commons Commissioner; this is relevant to my consideration of the application as identified at paragraph 5(b) below. In view of this I sought the views of Cornwall Council (the Council). The Council confirmed that the provisional registration was referred to a Commissioner in respect of the Land Section. The response of the Council was circulated to the applicant for any observations. I consider this matter further at paragraphs 7 and 8 below.

The Application Land

4. The application land comprises the property known as Hillside a semi detached dwelling with a fenced and gated garden. A grassed area crossed by a tarmac driveway, also part of the application land and Hillside, is located to the west of the dwelling.

Main Issues

5. The application has been made in accordance with the provisions of paragraph 7 of Schedule 2 to the 2006 Act. The main issues are whether:
 - (a) the land was provisionally registered as common land under section 4 of the Commons Registration Act 1965 (the 1965 Act);
 - (b) the provisional registration of the land as common land was not referred to a Commons Commissioner under section 5 of the 1965 Act;
 - (c) the provisional registration became final; and
 - (d) immediately before its provisional registration the land was not any of the following –
 - (i) land subject to rights of common;
 - (ii) waste land of a manor;
 - (iii) a town or village green within the meaning of the 1965 Act as originally enacted; or
 - (iv) land of a description specified in Section 11 of the Inclosure Act 1845 (c. 118).
6. The task of proving the case in support of the correction of the register rests with the person making the application, and the burden of proof is the normal, civil standard, the balance of probabilities.

Reasons

Whether the land was provisionally registered as common land under section 4 of the 1965 Act and not referred to the Commons Commissioner

7. CL131, which includes the application land, was provisionally registered on 30 November 1967. Registration became final on 11 November 1976. However, the provisional registration was referred to the Commons Commissioner in respect of the Land Section of the Register. Land is eligible for deregistration under paragraph 7 of Schedule 2 of the 2006 Act only if it was provisionally registered as common land under section 4 of the 1965 Act, and its provisional registration was not referred to a Commons Commissioner.
8. In view of the fact that the registration of CL131, of which the application land forms part, was referred to a Commissioner the application land is not eligible under paragraph 7 for deregistration. The requirements of paragraph 7(2)(b) of Schedule 2 cannot be met in relation to any land contained in a register unit where there was an objection to the provisional registration of any part of the register unit which caused the provisional registration to be referred to the Commissioner. This is regardless of whether the provisional registration of that land was specifically considered by the Commissioner.
9. Bearing in mind the above the application must be refused and it is not appropriate to consider whether the other relevant criteria set out in paragraph 5 above have been satisfied.

Other Matters

10. In subsequent correspondence the applicant submitted additional evidence which they considered assisted their case. Whilst I note this evidence, given my conclusions at paragraph 9 above, it is not appropriate to consider it further as this may prejudice any subsequent application. The Council also sought my views on a plan appended to the decision of the Commons Commissioner. My role is to consider the application before me against the relevant criteria and again it would not be appropriate for me to comment thereon.

Conclusion

11. Having regard to these and all other matters raised in the written representations I conclude that the application should be refused.

Martin Elliott

INSPECTOR