



Application Decision

Site visit held on 9 July 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: 2 August 2012

Application Ref: COM 307

The Memorial Works, Tremarcombe Common, Cornwall

Register Unit: CL 150

Registration Authority: Cornwall Council

- The application, dated 17 February 2011, is made under Schedule 2, Paragraph 6 of the Commons Act 2006 ("the 2006 Act").
- The application is made by Mr PG Stacey.
- The application is to remove land from the register of common land on the grounds specified in Paragraph 6 of Schedule 2 to the 2006 Act (buildings registered as common land).

Summary of Decision: The application is granted.

Preliminary Matters

1. I made a site visit to the application land on Monday 9 July 2012 accompanied by Mr PG Stacey.
2. A public notice of the application appeared in the 7 October 2011 edition of the *Cornish Times* newspaper. Notice of the application appeared 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. No objection was received following advertisement of the application.
3. In writing this decision I have found it helpful to refer to two sections of the application land separately. I therefore attach a copy of a plan, prepared by Cornwall Council, that was substituted for the one originally attached to the application with the agreement of the applicant, on which I have annotated the two sections of the land.

The Application Land

4. The application relates to those parcels of land outlined in red and shaded pink on the attached plan. The total area of the land is 0.154 hectares registered as parts of common land unit CL 150. There are thirty eight rights of common of pasture registered in respect of the land but no holder of common rights has raised any objection to the application.

The Statutory Requirements

5. Paragraph 6(3) of Schedule 2 to the 2006 Act provides that any person may apply to the Commons Registration Authority (CRA) to remove land from the register of common land. The Commons Registration (England) Regulations 2008 (the 2008 Regulations) set out the procedures to be followed.
6. The application was made on 17 February 2011¹. The application form indicates that it has been made in accordance with the provisions of Paragraph 6 of Schedule 2 to the 2006 Act which provides that an application can be made where:
 - (a) the land was provisionally registered as common land under Section 4 of the Commons Registration Act 1965 (the 1965 Act);
 - (b) on the date of the provisional registration, the land was covered by a building or was within the curtilage of a building;
 - (c) the provisional registration became final;
 - (d) since the date of provisional registration, the land has at all times been, and still is, covered by a building or within the curtilage of a building.
7. 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.
8. In addition, Paragraph 14 of Schedule 4 to the 2008 Regulations requires that an application under Paragraph 6 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 Paragraph 6(2) of Schedule 2 to the land to which the application relates.
9. 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.
10. Defra's published guidance² states that: *"It is particularly important that an application...is fully examined where, if granted, it would have some effect on the public interest, such as where land would be deregistered. It is for the applicant to adduce (convincing) evidence, and in its absence, the application must not be granted"*.

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.

² Part 1 of the Commons Act 2006: Guidance to commons registration authorities and the Planning Inspectorate for the pilot implementation, Version 1.43, September 2011.

Reasons

The Application

11. It is not disputed that the application was properly made and I am satisfied that it was. No objection was made to the application.

Registration of the land as common

12. The land was provisionally registered as common land on 1 December 1967(CL150). The provisional registration became final on 4 November 1976 by the direction of the Commons Commissioner.

Whether on the date of its provisional registration the land was covered by a building or within the curtilage of a building and has remained so since

13. The application land consists of two sections, which I have annotated A and B on the attached plan. Section A, known as The Memorial Works has been occupied by the present owners since 1949 and continually used as a works producing monumental masonry to the present day. It also seems to have been occupied as some sort of works before 1949 and an aerial photograph dated 1947 appears to show some buildings on the land. Various grants of planning permission for buildings for use in connection with the monumental mason's business in the 1950s and 60s document the development of the land in its current use. There would therefore appear to be no doubt that this section of the land was covered by buildings or within the curtilage of buildings on the date of its provisional registration and has remained so since.

14. Section B of the land was acquired by the present owners in 2001 for the expansion of the works. Previously it had formed the garden of the property No. 4 Lake View. A document relating to a local land charge search in 1964 includes a plan showing the land forming part of the property which is described as "*ALL THAT Cottage with the gardens thereto belonging known as No. 4 Lake View*". Further searches dated 1974 and 1990 also refer to the land forming part of the property, No. 4 Lake View, as does a conveyance plan from 1978. It is my understanding that the land remained in use as a domestic garden until it was acquired by the present owners in 2001. The proposed extension of The Memorial Works has not yet been carried out but I am satisfied that it is proposed that Section B will be fully incorporated into the works when the necessary permissions have been obtained. Accordingly, it is my view that this section of the application land was within the curtilage of a building on the date of its provisional registration and has remained so since.

Conclusions

15. I conclude that, on the balance of probabilities, all the criteria for deregistration set out in Paragraph 6 of Schedule 2 to the 2006 Act are satisfied in respect of the application land and that it should be removed from the register of common land.

Formal Decision

16. The application is granted and the land outlined in red on the plan substituted for that attached to the application dated 17 February 2011 shall be removed from the register of common land.

Barney Grimshaw

INSPECTOR

