



Application Decision

Inquiry held on 10 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: 1 August 2012

Application Ref: COM 318 Tremarcoombe Common, Cornwall

Register Unit: CL 150

Registration Authority: Cornwall Council

- The application, dated 22 November 2010, is made under Schedule 2, Paragraph 6 and Paragraph 7 of the Commons Act 2006 ("the 2006 Act").
- The application is jointly made by the owners of 10 properties in Tremarcoombe.
- 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) and in Paragraph 7 (other land wrongly registered).

Summary of Decision: The application is granted.

Preliminary Matters

1. I held a public inquiry into this application on Tuesday 10 July 2012 at Millennium House, Pensilva. I made an unaccompanied visit to the land referred to on Monday 9 July 2012. It was agreed by all parties present at the inquiry that a further accompanied visit was unnecessary.
2. A public notice of the application appeared in the 23 September 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. Three objections were received following advertisement of the application, one of which was subsequently withdrawn.
3. In writing this decision I have found it helpful to refer to different parts of the application land separately. I therefore attach a copy of a plan, prepared by Cornwall Council and substituted for that originally attached to the application, with the agreement of the applicants, on which properties included in the application are annotated by letter.

The Application Land

4. The application relates to several parcels of land outlined in red and shaded pink on the attached plan. The land has a total area of 0.37 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.

5. Ten separate landowners have jointly submitted the application.

The Statutory Requirements

6. 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.
7. The application was made on 22 November 2010¹. The application form indicates that it has been made in accordance with the provisions of Paragraphs 6 and 7 of Schedule 2 to the 2006 Act. Paragraph 6 provides that land can be removed from the register 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.
8. Paragraph 7 provides that land can be removed from the register where:
- (a) the land was provisionally registered as common land under Section 4 of 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;
 - (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;
 - (iv) land of a description specified in section 11 of the Inclosure Act 1845 (c. 118).
9. 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

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.

- (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.
10. 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.
11. 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.
12. 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"*.

Reasons

The Application

13. It is not disputed that the application was properly made and I am satisfied that it was.

Registration of the land as common

14. 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.
15. As the registration of the land was referred to a Commons Commissioner who directed that it became final, it would seem that the requirements of Paragraph 7 of the 2006 Act cannot be satisfied in this case. The application did not state which land was being applied for under Paragraph 6 and which under Paragraph 7. However, at the inquiry it was stated on behalf of both the CRA and the applicants that the reference to Paragraph 7 had only been included in the application as a fallback position should it be considered that any of the land applied for did not meet the criteria set out in Paragraph 6. This being the case, I was asked to consider all the land applied for against those criteria. Accordingly, I have not considered further the requirements of Paragraph 7.

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

16. As the properties included in the application vary, I have considered each separately:

Property A (as indicated on the attached plan). This property, known as Coombe Gate House, is said to have been built in around 1797. It is referred to in research carried out as part of the Cornwall Industrial Settlements Initiative

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.

as dating from before 1809 and is shown on an Ordnance Survey (OS) map of 1907 and on a photograph said to be taken in the early 1900s. There is no reason to believe that the present curtilage of the property has not formed part of the same property for a long period, although there is evidence that the curtilage may also have included other land in the past. Accordingly, there seems no doubt that the land occupied by this property was covered by a building or within the curtilage of a building on the date of its provisional registration as common land and has remained so since.

Property B. This property, known as The Stores, is indicated as dating from 1841-1880 in the research carried out as part of the Cornwall Industrial Settlements Initiative. It is also shown on the 1907 OS map and in a photograph said to have been taken between 1890 and 1900. It would appear from a copy of the register of title of the property that I have seen, that the curtilage of the property has probably been larger in the past. However, there seems to me to be little doubt that the land currently occupied by the property was covered by a building or within the curtilage of a building on the date of its provisional registration as common land and has remained so since.

Property C. This property, known as Brook Dell, originally formed part of the curtilage of Property B, The Stores, and was partly occupied by a double garage. The 1907 OS map appears to show the land within the curtilage of The Stores, albeit without a double garage on it. The current building on the site was erected in around 1994. It is my view that, on the balance of probabilities, the land occupied by this property was covered by a building or within the curtilage of a building on the date of its provisional registration as common land and has remained so since.

Property D. This property, known as Brook House, consists of two sections. The southern section appears at one time to have formed part of the garden of Property A, Coombe Gate House. Then in around 1962 it was developed as a pottery and operated as such until around 1980, after which time the present house was erected. This section along with the garage and access ways associated with it would seem clearly to have been covered by a building or within the curtilage of a building on the date of its provisional registration as common land and has remained so since. The northern section of the property now forms an informal garden area to the property. Entry to it can only be gained by way of the access way to the property and a private bridge over a stream. I have no clear evidence regarding how this section of land was occupied and used before the present house was built. However, a letter dated 16 September 2011, from Mr Leslie Piper, a former registered commoner and one of those tasked with identifying land for inclusion in the original registration of the common, clearly states that this section of land was never intended to be registered as part of the common. In the light of this information and the fact that this section of land appears to have been owned in conjunction with the southern section of the application land and has only been accessible by way of the private access to that land since the 1960s at least, it is my view that it is reasonable to regard it as having formed part of the curtilage of that property since that time. Accordingly, on the balance of probabilities it seems that the northern section of the property was also within the curtilage of a building on the date of its provisional registration as common land and has remained so since.

Property E. This property, 1 Lake View, dates from 1841-1880, according to the research carried out as part of the Cornwall Industrial Settlements

Initiative. It is also shown on the 1907 OS map. A conveyance, dated 24 November 1923 shows all of the land included in the current application and describes it as *"All that cottage with the gardens in front and rear thereof and the outbuildings and pigs-stye belonging thereto known as Number one Lake View..."* The same land appears still to be occupied by the property at present. Accordingly, it seems clear that the application land was covered by a building or within the curtilage of a building on the date of its provisional registration as common land and has remained so since.

Property F. This property, 2 Lake View, forms part of a more extensive land holding. However, the building and associated application land appears to date from 1841-1880 according to the research carried out as part of the Cornwall Industrial Settlements Initiative. It is also shown on the 1907 OS map. It is still occupied by the house, gardens and associated outbuildings and, accordingly, it would appear that it was covered by a building or within the curtilage of a building on the date of its provisional registration as common land and has remained so since.

Property G. This property, known as Ashbrook, appears to have been developed since 1841-1880 according to the research carried out as part of the Cornwall Industrial Settlements Initiative. Although clearly the house now situated on the land is relatively recent. The 1907 OS map appears to show buildings on the western part of the plot. At present the application land is entirely occupied by the dwelling and its gardens. In the light of the available information, it is my view that on the balance of probabilities the land now occupied by the property was covered by a building or within the curtilage of a building on the date of its provisional registration as common land and has remained so since.

Property H. This property, adjoining that known as Burrator, is occupied by a garage and access drive associated with that property. A signed declaration made in 1979 by Edgar Warren, states that he remembers the garage being erected in around 1929 by his father. A further declaration, made by Bessie Elliott in 1979 states that she was then the owner of Burrator and that the garage had been in place and used by her and her late husband since 1966. A map said to be a copy of a conveyance plan dated 1923 also appears to show a garage in existence on the land. It therefore seems clear that the application land was covered by a building or within the curtilage of a building on the date of its provisional registration as common land and has remained so since.

Property I. This property, referred to as Land at Lake View, appears to have been developed since 1841-1880 according to the research carried out as part of the Cornwall Industrial Settlements Initiative. The current owners describe it as their land and garage. It is my view that, on the balance of probabilities, this land was covered by a building or within the curtilage of a building on the date of its provisional registration as common land and has remained so since.

Property J. This property, 4 Lake View, dates from 1841-1880, according to the research carried out as part of the Cornwall Industrial Settlements Initiative. It is also shown on the 1907 OS map. It is still occupied by the house, gardens and associated outbuildings and, accordingly, it would appear that it was covered by a building or within the curtilage of a building on the date of its provisional registration as common land and has remained so since.

Property K. This piece of land appears to be a shared access linking properties in Lake View with their associated outbuildings. It is therefore effectively part

of the curtilage of 4 properties and has been such since well before the land was provisionally registered as common and remains so today.

17. In the light of the above, it appears that all of the application land was covered by buildings or within the curtilage of buildings on the date of its provisional registration as common land and has remained so since.

Other Matters

18. The two objections to all or part of the application that are outstanding both express concern at the perceived loss of public access resulting from the proposed deregistration of common land. Both objectors are also particularly worried that approval of the current application might lead to further applications being made and more valuable areas of common being lost. However, neither objector has produced any evidence to indicate that the criteria set out in Paragraph 6 of Schedule 2 to the 2006 Act have not been satisfied in this case. Accordingly, the objections have not affected my conclusions. Nevertheless, I would point out that I have seen no evidence to suggest that any of the land proposed to be deregistered is currently accessible to the public and I therefore do not believe that approval of the application will result in any loss of public amenity.

Conclusions

19. 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 all of the application land and that it should be removed from the register of common land.

Formal Decision

20. The application is granted and the land outlined in red on the plan substituted for that attached to the application dated 22 November 2010 shall be removed from the register of common land.

Barney Grimshaw

INSPECTOR

APPEARANCES

For the Applicants

Mr Anthony Kelly	Applicant
Mrs Karen Batchelor	Applicant
Mr Peter Bailey	Applicant
Mr D Piper	Applicant

Commons Registration Authority

Martin Wright	Cornwall Council (CC)
Tomas Hill	CC

DOCUMENTS

1. Bundle of documents prepared by Cornwall Council.
2. Additional copy of Cornwall Industrial Settlements Initiative – Figure 2, supplied by Mrs Batchelor.

