



Application Decision

Site visit made on 20 November 2013

By Sue Arnott FIPROW

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

Decision date: 10 January 2014

Application Ref: COM 458

Land at Hugus Common, Parish of Kea, Cornwall

Register Unit: CL 591

Registration Authority: Cornwall Council

- The application¹, dated 23 November 2011, 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 15 November 2012 edition of *The West Briton* newspaper and on Cornwall Council's website for the appropriate statutory period. Notice was also served on interested parties as required. Two representations were submitted in response: one in support of the application and one of which raised objections to registration of the land. Although the objector's letter was received after the deadline specified in the notice², I have nonetheless addressed the main points raised by it.
2. To assist me in determining the application I visited the site on 20 November 2013. No party expressed a wish to be present and I therefore inspected the land unaccompanied.

The Application Land

3. The application land lies in the Parish of Kea to the north west of Wheal Jane Farm, between Hugos Farm to the north and Baldhu to the south. It comprises 0.65 hectares of unbounded, roadside scrubland of mostly gorse and bramble with some tree cover towards the east of the site.
4. The application land is recorded as open access land under the Countryside and Rights of Way Act 2000 but no other designation applies to this site. Farm tracks exist to the east and west and one lies within the application land, broadly parallel to its northern boundary. A public bridleway is recorded on the definitive map and statement along the track to the east.

¹ Reference no. 2791

² As required by Regulation 26 of The Commons Registration (England) Regulations 2008

5. The land is owned by the Honourable E A H Boscawen. Agents acting on his behalf and for the Tregothnan Estate have objected to registration.

The Statutory Requirements

6. 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.
7. The application was made on 20 April 2012³. 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)
8. 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.

³ 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.

9. 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.

Reasons

The Application

10. 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 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

11. Waste land of a manor is regarded as being "the open, uncultivated and unoccupied lands parcel of the manor, or open lands parcel of the manor other than the demesne lands of the manor", a definition established in the case of *Attorney General v Hanmer*⁴.
12. More recently, in 1990 the *Hazeley Heath case*⁵ confirmed that it is not necessary for the land to have remained part of a manor, and published guidance now acknowledges that, when establishing whether the land in question is manorial in origin, "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."⁶
13. Here, the applicant has referred to several documents which he submits point to the land in question once having formed part of the waste lands of the Manor of Blanchland (sometimes known also as Albalanda). He has provided a transcript of part of the 'Court of Survey or Perambulation of the Manor of Blanchland' dated 23 May 1612 which describes in detail the boundary of the manor at that time. He asserts, and I accept, that the land now at issue lay within the boundary as so described.
14. As further proof, he refers to a tenancy agreement dated 30 October 1982 for "Premises at Baldhu and Kelsters in the Parish of Kea" (submitted by the objector's agents) which is headed "Manor of Blanchland". Although this does not put the matter beyond doubt, it is not inconsistent with the manorial origin of this site.
15. To demonstrate that the application land formed part of the waste lands of Blanchland Manor, the applicant relies on the Tithe Map and Apportionment for the Parish of Kea dated 1842. In this record, the land was included within 'Hugo's Common' and listed as land parcel No. 1628 which had a total area of

⁴ *Attorney General v Hanmer* [1858] 2 LJ Ch 837

⁵ *Hampshire County Council and others v Milburn* [1990] 2 All ER 257

⁶ At paragraph 9.2.15; Guidance to applicants in the pilot implementation areas Version 1.4 October 2013; repeated at paragraph 9.3.16; Guidance to commons registration authorities and PINS for the pioneer implementation Version 1.45 October 2013

- 72 acres 3 roods 4 perches. The land was owned (and occupied) by the Earl of Falmouth, the state of cultivation column is left blank and no rent charge is recorded.
16. Hugo's Common is not specifically described as 'waste', a description that is applied to other land parcels in the tithe apportionment. Consequently I consider the evidence to be derived from the tithe records for the application land having that status (as opposed to common) to be quite tenuous.
 17. The applicant provides more general references in extracts from Lake's 'Parochial History of the County of Cornwall' dated 1868 and references by notable local historians Tonkin and Hals. The latter notes Blanchland as being "*formerly the lands of Albalanda, now Boscawen's of Tregothnan*" and made reference to its waste lands. However, I agree with the objector's view that these references are largely circumstantial and not specific to the site in question.
 18. Nevertheless the earliest Ordnance Survey map showed that by the nineteenth century further divisions of Hugo's Common had left the application land as open furze and consistent with roadside waste land (although not direct proof of that status). Later editions show it tending towards rough pasture in parts and eventually, towards the end of the twentieth century, scrub similar to the vegetation I noted on my visit.
 19. In the tenancy agreement the relevant land parcel (1833) is listed under the "state of cultivation" heading simply as "unenclosed" whereas other parcels appear as croft, arable, old lane or buildings and garden. From this evidence it seems that in 1982 the application land probably had at least two of the required characteristics for waste land: it was open and uncultivated.
 20. On the question of occupation, the objector argues that the tenant uses the land for moving his livestock. However the published guidance⁷ makes clear that land does not cease to qualify as "unoccupied" unless there is some physical use which requires the exclusion of others. That does not appear to have been the case here.
 21. During my visit to the site I noted an area to the south east where material, mostly of an agricultural nature, had been tipped. Since this appeared to be a temporary store, and in the absence of any submissions to the contrary, I take the view that this is not sufficient to amount to occupation of either all or part of the application land.
 22. The objector submits that the land cannot be manorial waste if it has never been 'of a manor'. It argues that the burden of proof lies with the applicant to show that this land was once part of a manor; it is not for the objector to prove it was not. Since it considers the applicant has failed to provide any evidence that the land is *waste land* of a manor, the objector submits the application should be rejected.
 23. Although I disagree with the applicant's view that the evidence is conclusive, I nevertheless conclude that the material he has produced is sufficient, on a balance of probability, to show that the application land lay within the Manor of Blanchland, that it was waste land of the manor, and that it was (and still is) open, uncultivated and unoccupied.

⁷ At paragraph 9.3.14: Guidance to commons registration authorities and PINS for the pioneer implementation Version 1.45 October 2013

24. There being no substantive evidence to the contrary, I conclude that the requirement in sub-paragraph (4)(2) of Schedule 2 that the land is waste land of a manor is satisfied in this case.

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

25. The land was provisionally registered as common land (CL 591) on 24 February 1970 following an application (ref. 2090) by the Ramblers' Association made on 2 January 1970 (dated 31 December 1969).

Whether an objection was made to the provisional registration

26. Two objections were lodged to the registration of the land including one, dated 24 September 1970, by Wheal Jane Ltd (reference X420), and one, dated 12 January 1971, by Viscount Falmouth of Tregothnan (reference X729). In both cases the grounds for 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)

27. The provisional registration was recorded as being cancelled on 16 September 1981 by direction of the Commons Commissioner dated 12 August 1980⁸ (reference 206/D/776-777). Following a hearing, the Commissioner's decision recorded that "*The parties had signed a written request that confirmation of the registration be refused and accordingly I refuse to confirm the registration.*" Although the parties are not named, it is otherwise clear from the decision that the Ramblers' Association was a signatory to the request.

28. These are circumstances provided for by sub-paragraph 4(5) of Schedule 2 to the 2006 Act (as set out in my paragraph 7(c)(iii) above).

Other matters

29. I note the letter in support of this application from the local group of the Ramblers' Association makes reference to the original application in 1970 being submitted by the same organisation.

Conclusion

30. Having regard to these and all other relevant 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

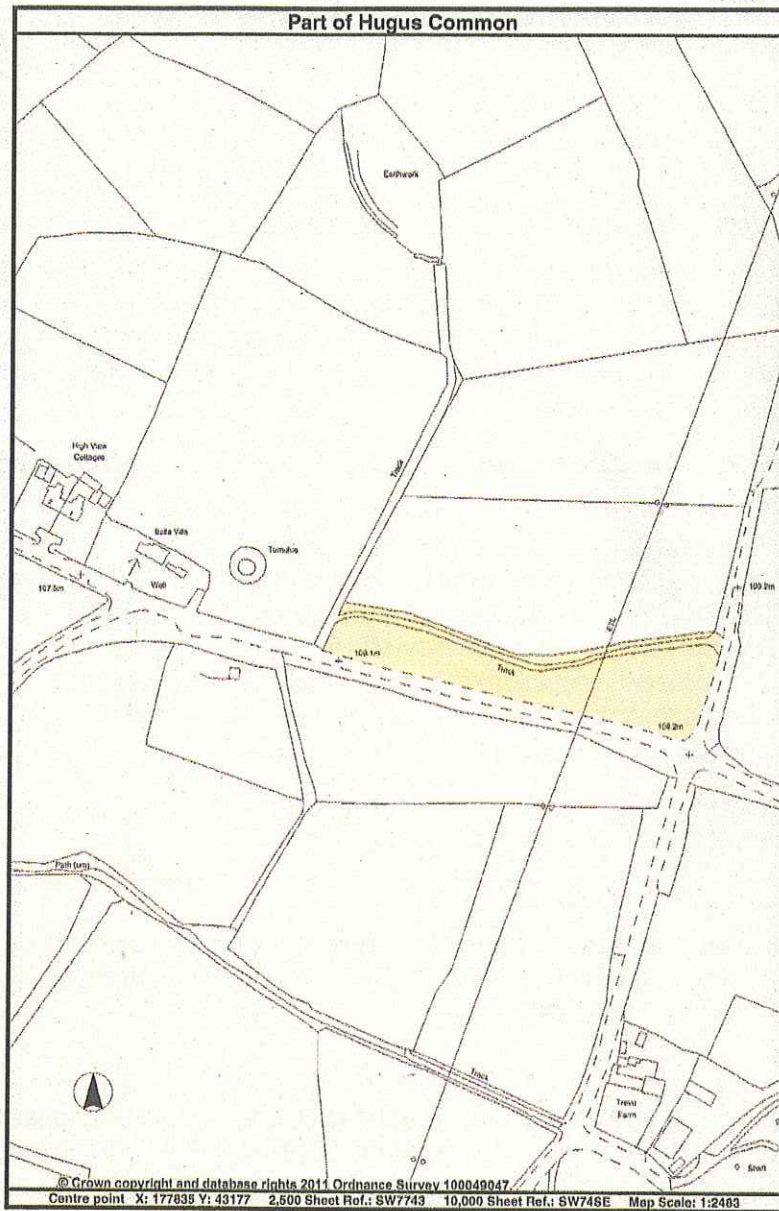
31. The application dated 23 November 2011 is granted and the land shaded in yellow on the plan submitted with the application shall be added to the register of common land.

Sue Arnott

INSPECTOR

⁸ The Register records this date incorrectly as 28 November 1980.

APPENDIX (c)



<http://mapping.cornwall.gov.uk/servlet/com.esri.esrimap.Esrimap?ServiceName=trans...> 18/11/2011

NOT TO ORIGINAL SCALE