



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 457

Land at Four Hundreds Downs, Parish of Chacewater, Cornwall

Register Unit: CL 576

Registration Authority: Cornwall Council

- The application, dated 23 November 2011¹, 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 forms part of an area known as 'Four Hundreds Downs' in the Parish of Chacewater. It lies to the north of Hallenbeagle, near Scorrier, adjacent to a newly built property, Sawmills Cottage. In total it comprises approximately 1.4 hectares of scrubland, characterised as 'coastal rough ground' consisting mostly of thorn, gorse and bramble and bounded on the south and eastern sides by traditional Cornish hedge/walls.
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. A public bridleway is recorded on the definitive map and statement along the track which leads towards Boscawen Farm and a connecting public footpath leads into (and through) the land now occupied by Sawmills Cottage.

¹ Reference no. 2790

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 the 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 23 November 2011³. 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 at the time of the application the land was 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. In further support he refers to a “Plan of boundary, Blanchland and St. Day Manors” compiled around 1865 by James Henderson, a civil engineer, which shows the boundary between these two manors to the west of Four Hundreds Downs consistent with the 1612 description.
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 Kenwyn⁷ dated 1843. In this record, the land parcel covering ‘Four Hundreds’ (No. 5315), is listed as “Downs, Waste and Roads”, a total of 358 acres 2 roods 28 perches in area. The land was owned by the Earl 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

⁷ Chacewater Parish was formed of the Ancient Parishes of Kea and Kenwyn.

Falmouth, there were no lessees, the state of cultivation column is left blank and no rent charge is recorded.

16. I agree with the applicant that the tithe documents confirm that in 1843 the application land appears to have been regarded as down or waste land. Although the word "uncultivated" is not used in the apportionment, this is implied by the absence of any rent charge, taken as tithe or otherwise, and the description of the land as 'down or waste'.
17. The conclusion that the land was once a part of the waste lands of the Manor of Blanchland is consistent with other more general references provided by the applicant, these being 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 "*formerly the lands of Albalanda, now Boscawen's of Tregothnan*" and further "*the waste lands of which lordship is not only abounding in tin and tin mines, but for about twenty years last hath yielded its owner about twenty thousand pounds out of its copper mines, though the waste or down in which it is found is in many places scarce worth eighteen pence an acre*". However, I agree with the objector's view that this is largely circumstantial and not specific to the site in question.
18. Nevertheless, the Ordnance Survey map of the area in the 1880s reveals the application land linked to the (disused) Eastdowns copper mine.
19. 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.
20. 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 regarded as waste land of the manor, and that it was (and still is) open, uncultivated and unoccupied.
21. On my site visit I found nothing to suggest otherwise and I have seen no convincing evidence to the contrary. I therefore 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

22. The land was provisionally registered as part of a much larger common land unit referred to as the 'Downs and Waste at Whitehall' (CL 576) on 20 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

23. An objection to the registration of the land dated 12 January 1971 by the Right Honourable George Hugh Viscount Falmouth of the Tregothnan Estate (reference X720) was noted as being recorded in the Register on 3 March 1972; 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)

24. The provisional registration was recorded as being cancelled on 22 April 1981 by direction of the Commons Commissioner dated 17 June 1980⁸ (reference 206/D/928). The reason given for the decision was that "*All the persons entitled to be heard at the hearing of this dispute have agreed upon the terms of the decision to be given by (the Commissioner) and have sent to the Clerk of the Commons Commissioners particulars of such terms signed by or on behalf of all such persons.*" Accordingly the Commissioner refused to confirm the registration.
25. 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

26. 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

27. 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.

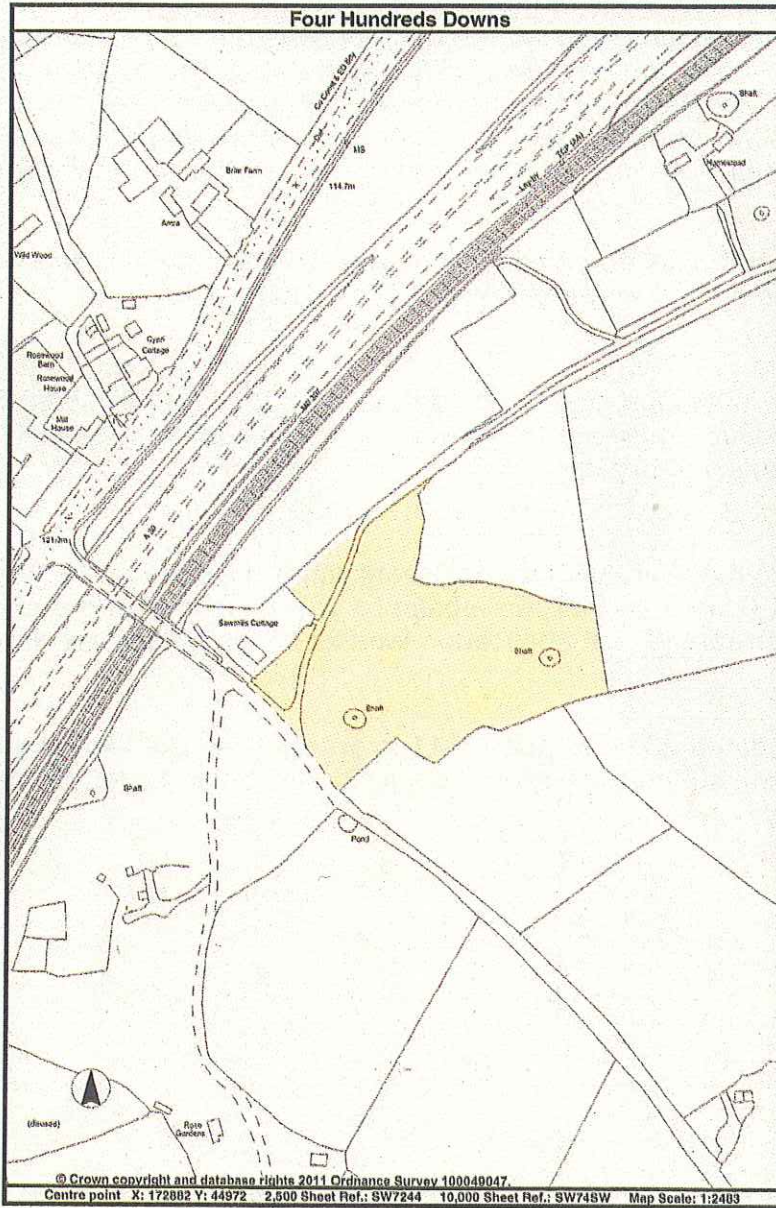
Formal Decision

28. 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 14 August 1980.



<http://mapping.cornwall.gov.uk/servlet/com.esri.esrimap.Esrimap?ServiceName=trans...> 23/11/2011

NOT TO ORIGINAL SCALE