



Application Decision

Site visit carried out on 18 September 2014

By Helen Slade MA. FIPROW

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

Decision date: 08 October 2014

Application Ref: COM 553

Name and location of common: Kelsters Common, Tomperrow, Cornwall

Register Unit: CL589

Registration Authority: Cornwall Council

- The application, dated 5 April 2013, is made under Paragraph 4 of Schedule 2 to the Commons Act 2006 ('the 2006 Act').
- The application is made by Mr Tomas Hill.
- The application is to register waste land of a manor not registered as common land in the register of common land.

Summary of Decision: The application is granted.

Preliminary Matters

1. I made an unaccompanied visit to the application site during the afternoon of Thursday 18 September 2014 when I was able to access the three parcels of land concerned, with varying degrees of difficulty.

The Application Land

2. The northern parcel ('Parcel 1') lies adjacent to the unclassified road from Threemilestone to Tomperrow and Hugus. It is bounded to the north by a stream, to the south by a route signposted as a public bridleway and to the east by a hedged field boundary and measures approximately 10 metres by 35 metres. It consists mainly of scrub comprising coppiced hazel, with holly, ivy, bracken, brambles and ferns forming the understorey. It is itself divided by two small tracks - one leading to a field gate - and to the south of these tracks the trees comprise mainly ash and hawthorn.
3. The largest parcel ('Parcel 2') also lies adjacent to the unclassified road and is somewhat larger but still small at 0.234 of a hectare. It is more impenetrable than Parcel 1, forming part of the sloping roadside verge which is heavily vegetated by sycamore trees, with holly, bramble, gorse and ivy. There is some evidence of heath vegetation on the grassier verges, with heather showing in patches. It is bounded to the east by a field boundary and is crossed by a grass-cut track to a field gate just to the north of the property called Hillside. The 'tail' of Parcel 2 forms a narrow roadside verge about one metre wide which rises steeply to a Cornish hedge. The wider section of Parcel 2 is accessible in part and shows evidence of a 'borrow-pit'¹ towards the

¹ A small depression where stone or soil may have been removed

northern extremity and possible evidence of charcoal making nearer the grass track.²

4. 'Parcel 3', the southernmost of the three areas of land, is a surfaced track leaving the unclassified road to the west and running on beyond the application area to the south-west. It does not appear to be a public right of way, but it leads to, and joins, a route which is shown on the Ordnance Survey maps as a public right of way.

The Statutory Requirements

5. Paragraph 4(6) of Schedule 2 to the 2006 Act provides that any person may apply to the Commons Registration Authority to add land to 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 6 December 2011³ and has been made in accordance with the provisions of Paragraph 4 (5) of Schedule 2 to the 2006 Act, which provides that land may be added to the register of common land where the land is waste land of the manor and where:
 - a) The land was provisionally registered as common land under section 4 of the Commons Registration Act 1965 ('the 1965 Act');
 - b) An objection was made in relation to the provisional registration; and
 - c) The provisional registration was cancelled in the circumstances specified in sub-paragraphs (3), (4) or (5) of paragraph 4.
7. The circumstances set out in sub-paragraph (5) are that the person on whose application the provisional registration was 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 or some other duly authorised officer of every applicant which is a body corporate or an unincorporated association.
9. In addition, paragraph 14 of Schedule 4 to the 2008 Regulations requires that an application made under Paragraph 4 of Schedule 2 to the 2006 Act must include –
 - a) a description of the land to which the application relates; and
 - b) evidence of the circumstances set out in paragraph 4(2) of Schedule 2 to the 2006 Act.
10. 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.

² An old and disused metal charcoal kiln

³ For the purposes of remedying or rectifying mistaken non-registration under the Commons Registration Act 1965 the application must be made on or before 31 December 2020.

Reasons

The current application

11. The application has been made and advertised in accordance with the regulations. No objection was made within the specified time. One letter of support was received on behalf of the Carrick Group of the Ramblers.

Whether the land was provisionally registered under the 1965 Act

12. The application land was originally the subject of an application made by the Ramblers Association on 2 January 1970, in accordance with the provisions of the 1965 Act. The application, no. 2090, was provisionally registered as CL589 on 24 February 1970, and included the application land as part of a larger parcel. No-one has disputed these facts.

Whether there were any objections to that registration

13. An objection to the provisional registration was made by the landowner at the time, Viscount Falmouth, and also by Wheal Jane Limited. Both objectors claimed that the land was not common land at the date of registration. The objections (nos. X727 and X418 respectively) were made on 12 January 1971 and 24 September 1970 respectively and were formally recorded in the Commons Register on 11 May 1971. No-one has contested this fact.

The circumstances of the cancellation of the provisional registration

14. On the 16 September 1981 the commons register was amended to record the cancellation of the provisional registration of the land involved at the direction of the Commons Commissioner. A hearing had been held on 9 July 1980 by the Commissioner and in his report, dated 12 August 1980, he notes that the parties had signed a written request that confirmation of the registration be refused. No other details are available to me to suggest why the agreement was reached, but the Commissioner refused to confirm the registration accordingly.
15. I am therefore satisfied that the criteria identified in paragraph 7 above have been met.

Evidence that the application land is waste land of the manor

16. In order to justify the re-registration of the application land it is necessary for the applicant to show that it is (or was) part of the waste land of a manor at the time of his application. Guidance on applications is contained in '*Guidance to applicants in the pioneer implementation area*' and in the associated '*Guidance to Commons Registration Authorities and The Planning Inspectorate for the pioneer implementation*', both produced by defra.⁴
17. Legal authority for the definition of 'waste land of the manor' suggests that it is 'the open, uncultivated and unoccupied lands parcel of the manor, other than demesne lands of the manor'.⁵ Land is 'of the manor' if it can be shown to be land which is, or was, formerly connected to the manor concerned.⁶ 'Demesne

⁴ Latest editions dated January 2014

⁵ *Attorney General v Hanmer* [1858]

⁶ *Hampshire County Council v Milburn* [1990]

land' is land within a manor which is owned and occupied by the lord of the manor for his own purposes.

18. For land to be termed 'occupied' it is considered that there must be some exclusivity of physical use (e.g. by a tenant or owner alone).
19. The vast majority of land in England will inevitably be former land of a manor, owing to the historic system of land management in this country. However, the applicant must show that the land which is the subject of this application is, on the balance of probabilities, land lying in an area which is recognised to have been (and may still be) manorial land, and that there is no convincing evidence to the contrary.

1842 Tithe map and apportionment

20. The application land appears to fall entirely within a larger parcel identified on the Tithe Map with the number 1278, and described in the apportionment as 'Common', lying within an area called Kelsters. The whole parcel is 5 acres, 0 roods and 4 perches in area. It is not recorded as being cultivated at that time, and the Earl of Falmouth is listed as the owner. I am therefore satisfied that, in 1842, the application land was common land, although the Tithe Apportionment does not provide evidence of the manorial status (although it is highly likely).

Manorial Status

21. The applicant considers that the application land was traditionally part of the manor of Blanchland and has provided an extract from Lake's 'Parochial History of the County of Cornwall'⁷ in support of his claim. He has also submitted a map of the manor of Blanchland, and a description of the perambulation of 1612.
22. The map is not easy to follow, and the transcript uses many names for which a degree of interpretation is needed in more modern times. However, I have been able to establish that it appears to follow the watercourses in the surrounding area, including the watercourse which forms the northern boundary to Parcel 1 of the application land.
23. Lake's 'Parochial History' includes various references to the Parish of Kea being part of the Manor of Blanchland (or Albilanda) and recording that the manor was in the hands of Boscawen of Tregothnan, which the editor describes as the 'magnificent seat of Lord Falmouth'.
24. The Land Registry details show that the majority of the application land is currently registered to The Honourable Evelyn Arthur Hugh Boscawen, of Tregothnan, and it is therefore still in the same family ownership.
25. The exception to this is Parcel 3, which does not appear to be registered at all. However this does not detract from the fact that it previously has been shown to have been part of the manor of Blanchland, and part of the common, and there is no evidence that this situation has altered.
26. Taken together, I am satisfied that the applicant has been able to show that, on the balance of probabilities, all the application land was part of a manor (Blanchland) on the date of the application.

⁷ Volume II published in 1868

Whether the land is waste land

27. None of the application land is subject to a lease, although some of the adjoining land is leased and occupied by the Scouting Association.
28. The majority of the application land is scrub or roadside verge, as I have described in paragraphs 3 and 4 above, and is not occupied in any sense. However, there are tracks across Parcels 1 and 2 which lead to land which is occupied (adjacent fields) or to tracks which are public rights of way.
29. The Defra guidance suggests that occupation requires some physical use of the land to the exclusion of others, such as might occur if the land were occupied by a quarry, or were improved by a tenant for his own exclusive use and benefit. It would seem to me that the tracks across Parcel 1, and the track that comprises Parcel 3 are all tracks which are used by persons with an interest in the adjacent land or properties, but I have no information as to whether the occupiers have exclusive rights over the tracks.
30. In the absence of any objections to the registration of the land as common land, and no evidence that contradicts the evidence that the land is waste land of the manor, I conclude that all the application land is waste land of the manor of Blanchland.

Conclusions

31. Having regard to these and all other matters raised at the inquiry and in the written submissions, I conclude that, on the balance of probabilities, all the criteria for the registration of the application land have been satisfied.

Formal Decision

32. The application is granted and the land coloured in yellow on the plan attached to the application shall be added to the register of common land.

Helen Slade
INSPECTOR

0 10 20 40 60 80
Metres

SW7744

177200 177300 177400 177500 177600

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- Key**
- Common Land & Village Green
 - Cancelled Common Land
 - Cancellation Boundaries

