



Application Decision

Site visit made on 17 January 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: 21 February 2012

Application Ref: COM 279

The Old Chapel, Trenarren Ledrah, St Austell, Cornwall

Register Unit: VG 672

Registration Authority: Cornwall Council

- The application, dated 1 November 2010, is made under Schedule 2, Paragraph 8 of the Commons Act 2006 ("the 2006 Act").
- The application is made by Mr GA and Mrs MDD Taylor.
- The application is to remove land from the register of town or village greens on the grounds specified in Paragraph 8 of Schedule 2 to the 2006 Act (Buildings registered as town or village green).

Summary of Decision: The application is granted.

Preliminary Matters

1. I made a site visit to the application land on Tuesday 17 January 2012 accompanied by Mr GA Taylor.
2. A public notice of the application appeared in the 25 May 2011 edition of the *Cornish Guardian* 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. A single objection was received following advertisement of the application.

The Application Land

3. The application relates to that parcel of land shown coloured green on the plan appended to this decision which was registered as part of the village green described as Trenarren Ledrah (VG 672) under the provisions of the Commons Registration Act 1965 (the 1965 Act).
4. The application land is currently occupied by a private house known as the Old Chapel and its associated garden. The northern and north-eastern boundary of the application land is formed by an almost vertical cliff rising around 10 metres or more from the level of the house and garden and separating them from the rest of the village green. The southern and south-western boundary seems to coincide with that of the village green itself, although it is difficult to determine precisely as a result of the small scale of the Register Map and the

thickness of the line defining the boundary of the village green. The plan appended to this decision, which is an enlarged version of that attached to the application, shows the southern boundary of the application land adjoining a path or track it would appear that in recent years the alignment of this has changed and it is now located further to the south and the curtilage of the Old Chapel has extended to include additional land which is not registered as part of the village green.

The Statutory Requirements

5. Paragraph 8(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 town or village greens. The Commons Registration (England) Regulations 2008 (the 2008 Regulations) set out the procedures to be followed.
6. The application was made on 1 November 2010¹. The application form indicates that it has been made in accordance with the provisions of Paragraph 8 of Schedule 2 to the 2006 Act which provides that an application can be made where:
 - (a) the land was provisionally registered as town or village green under Section 4 of 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 8 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 8(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 town or village greens rests with the person making the application, and the burden of proof is the normal, civil standard, namely, the balance of probabilities.

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.

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"*.

Reasons

11. It is not disputed that the application was properly made and I am satisfied that it was.
12. The land known as Trenarren Ledrah, which includes the application land was provisionally registered as a village green on 9 July 1969 following an application made by St Austell with Fowey Borough Council. The provisional registration was undisputed and became final on 3 September 1973.
13. The only outstanding issues with regard to this application would thus appear to be whether the application land was covered by a building or was within the curtilage of a building when it was provisionally registered as Village Green and whether it has remained so covered since then.
14. The Old Chapel is now a private residence but appears to be the same building, albeit somewhat altered and extended that is shown on the Ordnance Survey (OS) 1st Edition map of 1875-1901 and annotated *"Methodist Chapel (Wesleyan)"*. In fact, it is claimed that the building has been on the site since approximately 1815. The present owner has stated that he believes it was converted from a chapel to a house in the early 1970s. In addition, a long term resident of Trenarren has stated in a letter that she recalls attending the Sunday School held in the chapel building in the 1950s. Accordingly, I have no difficulty in concluding, on the balance of probabilities, that the building was already situated on the application land at the date it was provisionally registered as village green (9 July 1969).
15. On my visit it was clear that the property, the Old Chapel, along with the private garden associated with it occupies all of the application land. The boundary between the application land and the rest of the village green follows the line of a steep cliff which has clearly existed for a long time. This suggests that this boundary may well not have changed since the property was built. The cliff is marked on the OS map of 1875-1901 and on the register map. I also note that the register was formally amended in June 1989 to record the fact that the application land was not in the same ownership as the rest of the village green.
16. The only objection made suggests that the gardens of the Old Chapel may have been extended onto the village green and do not coincide with the curtilage of the original chapel. As mentioned already it is difficult to interpret the Register Map precisely as a result of its small scale and the thickness of line used to define the boundary of the village green. Nevertheless, having studied all the plans available, it is my view that the registered boundary of the green coincided with the edge of the track marked on older plans. The line of this now appears to have moved further south and the garden of the property to have extended onto land which is not part of the village green. However, it does not appear to me that any additional part of the green itself has been incorporated

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.

into the curtilage of the Old Chapel since the time of the provisional registration of the village green.

17. In the light of this, it is my view that, on the balance of probabilities, it is most likely that all of the application land was covered by a building and its curtilage in 1969 when it was provisionally registered as part of the village green and has remained so covered since then.

Other Matters

18. It came to my attention after my site visit that a map prepared by the CRA which accompanied the notice of the application was incorrect in that it showed a larger area of land than that accompanying the application itself. It would appear that it was this map which caused the sole objector's concern that the application included land that was not within the curtilage of a building at the time of provisional registration. However, further comments made by the applicant and the CRA have confirmed that the plan accompanying the notice was incorrect and that although the garden of the Old Chapel has been extended since the provisional registration of the village green this has been on to land outside the green itself. The application plan, an enlarged version of which is attached to this decision, is the correct one. In view of the fact that this error showed too much land proposed to be removed from the register than is in fact the case, it is my view that nobody's interests have been prejudiced as a result and it is therefore unnecessary for the application to be re-advertised.

Conclusions

19. I conclude that, on the balance of probabilities, all the criteria for deregistration set out in Paragraph 8 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 town or village greens.

Formal Decision

20. The application is granted and the land coloured green on the plan attached to this decision shall be removed from the register of town or village greens.

Barney Grimshaw

INSPECTOR

