
Application Decision

Inquiry held on 3 November 2015

Site visit made on 4 November 2015

by Alan Beckett BA MSc MIPROW

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

Decision date: 29 January 2016

Application Ref: COM 402

Land at Hoddlesden Moss, Hoddlesden, Nr Darwen

Register Unit Number: CL 153¹

Commons Registration Authority ('CRA'): Blackburn with Darwen Borough Council

- The application, dated 16 November 2011², is made under paragraph 4 of Schedule 2 of the Commons Act 2006 ('the 2006 Act').
 - The application is made by the Open Spaces Society and the British Horse Society ('the Applicant').
 - The application is to register waste land of a manor as common land.
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Decision

1. The application is not granted.

Procedural Matters

2. I held a public local inquiry into the application on Tuesday 3 November 2015. The Applicant was not represented at the inquiry and relied upon its documentation submitted in advance. Mr Byrne supported the application and had submitted a statement of support in advance of the inquiry; although present during the proceedings he did not speak at the inquiry. The case against the application was put by Mr Evans of Counsel who appeared on behalf of Mr & Mrs Entwistle. I also heard from Mr Foley and Mr Bowker who spoke in objection to the application being granted.
3. Having closed the inquiry on Tuesday evening, I made an accompanied inspection of the application land on Wednesday morning.

The Application Land

4. The land which is the subject of this application comprises a block of land to the west of Broadhead Road and to the east of Sunnyfield Lane. The application land is shown on the plan attached to this decision as appendix A.

The Main Issues

5. Paragraph 4 (6) (a) of Schedule 2 to the 2006 Act provides that any person may apply to the CRA to register waste land of a manor as common in the

¹ Original common land register unit number.

² For the purpose of remedying non-registration or mistaken registration under the Commons Registration Act 1965 ('the 1965 Act'), the application must have been made before 31 December 2020.

register of common land. The Commons Registration (England) Regulations 2008 set out the procedures to be followed.

6. The application has been made in accordance with the provisions of paragraph 4 (2) of schedule 2 to the 2006 Act which provides that an application can be made where the land 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 1965 Act;
 - (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).

Reasons

The Application

7. The CRA has confirmed that the application was properly made and that the required statutory procedures had been followed; that this is so has not been disputed by any party. From my examination of the papers submitted I am satisfied that the application is sufficient to meet the procedural requirements of paragraph 4 (6) (a) of schedule 2 to the 2006 Act.

Whether the application land was provisionally registered as common land under section 4 of the 1965 Act

8. The application land was provisionally registered as common land (as part of CL 153) on 2 October 1969 following an application made on 15 November 1968 by Jeffrey and Brenda Mayers of Far Scotland Farm, Hoddlesden to record rights of common in the register of common land.

Whether an objection was made to the provisional registration

9. An objection to the rights application was received by Lancashire County Council³ on 5 July 1972 together with an objection to the recording of the land as common in the commons register. The ground of objection to the rights application was that the land was not subject to rights of common; the ground of objection to the registration of the land was that the land was not common land at the date of the provisional registration.

Whether the provisional registration was cancelled in the circumstances specified in paragraph 4 (3 - 5) of Schedule 2

10. The documentary evidence relating to the application made by Mr & Mrs Mayers shows that they understood from their title deeds that a grant of common rights had been made in 1862 but they had been advised that the deeds provided insufficient evidence to support a claim under the 1965 Act. In December 1972 enquiries were made of Lancashire County Council (as the owner of part of Hoddlesden Moss) with regard to evidence of a grant of rights over the land. The County Council replied on 16 January 1973 that there was no evidence in its title deeds of any such grant.
11. The provisional registration of the land was cancelled on 12 March 1973. There is no evidence extant of any further negotiations which may have taken place between 16 January 1973 and 12 March 1973, but it is submitted by the Applicant that the cancellation of the registration must have involved the agreement of Mr & Mrs Mayers or was undertaken at their request. The Applicant's submission regarding the likely circumstances of the cancellation of the provisional registration is not contested by Mr Evans and I am of the view that the submission made by the Applicant is the most probable explanation of the sequence of events which led to the cancellation of the provisional registration of the application land.
12. I am satisfied that the circumstances of the cancellation of the provisional registration of the application land are those which are provided for by paragraph 4 (5) of Schedule 2 to the 2006 Act (as set out in paragraph 6 (c) (iii) above).

Whether the application land is waste land of a manor

(i) 'of a manor'

13. Land is 'of a manor' if it can be shown to be land which is, or was, formerly connected to a manor⁴. The Applicant contends that all of the application land is of manorial origin. That the documentary evidence demonstrates that the part of the land to the west and north-west of Grey Stone Hill lay within the township of Over Darwen and had originally been part of the manor of Accrington was not disputed by Mr Evans. Nor was it disputed that the remainder of the application land had formed part of the manor of Edgworth.
14. The documentary evidence adduced shows the process by which lands which once formed part of the Forest of Rossendale were re-assigned to the manor of Accrington within the Honour of Clitheroe and provide evidence of the dispute

³ The Commons Registration Authority at the time

⁴ Hampshire County Council v Milburn [1990]

between James I and those copyholders who had taken lands when Rossendale had been disafforested by Henry VIII in 1507. This dispute was resolved by Act of Parliament in 1662 which confirmed that the lands in Rossendale were absorbed into the manor of Accrington.

15. Published guidance acknowledges that *"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 a 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"*⁵. In this case, I consider the available evidence to be sufficient for it to be reasonably concluded on a balance of probabilities, that the application land was once part of both the Manor of Accrington and the Manor of Edgworth. No evidence has been submitted to counter that reasonable conclusion.
16. That the application land was once part of two different manors is of no consequence with regard to the requirements of schedule 2 of the 2006 Act as the whole of the application land is manorial in origin.

'waste land'

17. In the case of Attorney-General v Hanmer [1858] (*'Hanmer'*) waste land of the manor was *'the open, uncultivated and unoccupied lands parcel of the manor, other than the demesne lands of the manor'*. In the *Hazeley Heath*⁶ case the House of Lords provided a definition of the term "waste land of a manor" in the context of legislation which had been enacted subsequent to the enfranchisement of copyhold tenure. The House of Lords held that *"it is permissible to construe the phrase in this particular context of a post-1925 statute as meaning waste land which was once waste land of a manor in the days when copyhold tenure still existed"*.
18. The *Hanmer* and *Hazeley Heath* cases therefore raise two questions when considering whether the application land can be considered to be 'waste land'. Firstly, was the land 'waste land' at the date of the schedule 2 (4) application (that is, in November 2011) and secondly, was the land at some point in the past 'waste land of the manor when copyhold tenure still existed'.
19. With regard to the second question, the supporter contends that if it is determined that the application land was waste land at the time of the application, then it would be very unlikely that the land would not have been waste land of a manor when copyhold tenure still existed. Mr Evans submits however that the references found in the Victoria County History ('VCH') for Lancashire to there being *'rights of Turbary and pasture on the waste and moors of Edgworth'* and references within the Court Rolls of the Honour of Clitheroe to there being commons in Hoddlesden lack specificity as to which parcel of land within either manor was being referred to.
20. The documentary evidence adduced suggests that enfranchisement of the copyhold lands of Accrington had occurred by around 1810. The VCH notes that there was no record of the manor of Edgworth from the mid 17th century which suggests the relatively early demise of the manorial system of administration in

⁵ Paragraph 7.3.16 Guidance to commons registration authorities and the Planning Inspectorate (version 2.0) December 2014

⁶ Hampshire County Council v Milburn [1990]

this part of Lancashire. The references given in the VCH and the Court Roll entries of rights of common being exercised in Edgworth and commons existing in Hoddlesden are too generalised for a conclusion to be drawn that the application land was being referred to. On the basis of the documentary evidence available, it is not possible to conclude, on a balance of probabilities, that the application land was waste land of the manor when copyhold tenure still existed.

21. To determine whether the application land could be described as 'waste land' at the time the application was made, I consider it is necessary to examine the evidence of recent and current use of the land under the heads of the definition of waste land set out in *Hanmer*, which is referred to in the current guidance provided by Defra⁷. The guidance notes that an application must satisfy all the criteria of the *Hanmer* definition and if the land fails any of the criteria the application must fail.

Open

22. The Applicant submits that the test which should be adopted to determine whether the land can be described as 'open' is that used in the process of mapping 'open country' under the Countryside and Rights of Way Act 2000 ('the 2000 Act') and that the concept of 'open character' introduced by the 2000 Act is a useful benchmark.
23. The Applicant notes that under the 2000 Act moorland was defined as being '*usually of an open character with semi-natural vegetation such as mires...heaths [and] rough unimproved acid grassland*' with the reference to 'open character' being explained as '*...whilst individual land parcels might comprise enclosures of varying size, they will in combination form a landscape that provides open vistas (though sometimes these are interrupted by woodland, incised valleys or other local features). Many areas of moorland include (on the edges or within otherwise relatively larger tracts of land) smaller areas bounded by walls or fences, which are an inherent part of the moorland landscape and will therefore be included as 'open country'*'.
24. On behalf of the objector, Mr Evans argues that the concept of 'open character' was for a specific purpose under a different statute and was the wrong test to apply with regard to schedule 2 of the 2006 Act. The concept of 'open character' was not one which had been applied in other cases considered under the 2006 Act or under the Commons Act 1965, where 'open' had been taken to mean 'unenclosed'. The objector submits that the application land could not be described as 'unenclosed'; the areas of land referred to as A, B, C and D⁸ during the inquiry were fenced as was the perimeter of the Moss. In Mr Evans' submission, the application land could not be described as 'unenclosed' despite it offering 'open vistas'.
25. Since 2012 Mr Entwistle's land has been managed under a Higher Level Stewardship ('HLS') scheme with Natural England (NE), but was not in such a scheme at the time the application was made. Whilst the concept of 'open character' was developed by NE as part of the 2000 Act and whilst parts of the application land are recorded on the maps of 'open country', published

⁷ Paragraph 7.3.12 Guidance to commons registration authorities and the Planning Inspectorate (version 2.0) December 2014

⁸ See the plan at Appendix B

guidance with regard to what is 'open' for the purposes of the 2006 Act is that 'open means unenclosed'⁹. Enclosure is a physical action to mark the boundary of the land and I am satisfied that for the purposes of the *Hanmer* definition of waste land, whether land can be said to be 'open' is a question of whether or not the land has been subject to some physical action to define its boundaries and physically separate it from other land.

26. I heard from Mr Entwistle that his father had first taken a tenancy on Larkhill Farm in 1960 and had been the tenant of Alexander Carus & Sons until 1996 when Mr Entwistle became the tenant. In 2012 Mr Entwistle purchased Larkhill Farm together with the application land. Having been born at the farm, Mr Entwistle has known the land at issue all his life.
27. For the purposes of the inquiry, Mr Entwistle had sub-divided the property into five areas. These were known at the inquiry as A, B C, D and the Moss and are shown on the plan at appendix B. According to Mr Entwistle Area A is fenced along the track which leads to Lower Pastures Farm and had always been fenced and walled. Area B is fenced to prevent sheep straying on to the Moss and has been so fenced since Mr Entwistle's father took the tenancy on the farm in 1960. Area C is owned by Lancashire County Council and is part of the site of the former coal mine which closed in 1961. The site had been planted with trees and the boundary is marked by a post and rail fence which surrounds the plantation. Area D had been part of Lower Pastures Farm and Mr Entwistle held a tenancy on the land between 2006 and 2012. This land had always been fenced to separate it from the Moss, from Broadhead Road and from Mr Foley's adjacent property.
28. Mr Entwistle's evidence is that the land on Hoddlesden Moss not subject to the tenancy agreement was occupied by his father as part of an informal agreement with the freeholder. Under that agreement the land was grazed with sheep for three months of the year during the summer, with Mr Entwistle's father having been responsible for the maintenance on repair of the boundary walls and fences on the Moss in addition to the fences which marked the boundary of Larkhill Farm. Mr Entwistle stated that from a young age he had assisted his father with the maintenance and repair of the boundary walls and fences on the Moss.
29. Since purchasing the land and entering into the HLS agreement with NE, Mr Entwistle has renewed and replaced much of the boundary fencing on his property. This was evident from the site visit. It is Mr Entwistle's evidence that the fences currently in place are renewals of and replacements for fencing which had been present during his father's and subsequently his own tenancy of the land.
30. Mr Burke's evidence is that he had visited Hoddlesden Moss around 6 times per year since 1992 to monitor populations of specific breeding birds on the land. His recollection is that during the time he had known the land the fences on the Moss in the area between Grey Stone Hill and Scotland reservoir had been maintained. Mr Howarth's written evidence was that the boundary fences he

⁹ Paragraph 7.3.14 Guidance to commons registration authorities and the Planning Inspectorate (version 2.0) December 2014

noted in 2010 as part of a survey for a Farm Environment Plan had the appearance of being around 25 years old.

31. The claim that the application land was fenced prior to and at the time of the application is supported by the photographs submitted by the Applicant which had been taken prior to the application being made. The photographs which show the boundary of the Moss clearly show the existence of fencing along the boundary and the existence of fences which separate areas A, B, C and D from the Moss.
32. Part of the application land is also access land although the only points of access to the land are the public footpaths that cross the site. Other than the stiles on the public footpaths which provide access through the boundary fences the evidence before me suggests that the application land had been enclosed from adjacent land and other public highways since the 1960s and that there had not been unobstructed access to the land other than via the two public rights of way which cross the site.
33. The application land includes a thin strip which leads to Broadhead Road. This strip is the access to Mr Foley's field and also provides access to the east of the former colliery site; whilst this strip was fenced on the boundary between Mr Foley's and Mr Entwistle's land it was not separate from Mr Foley's field and was gated and locked at Broadhead Road. Mr Foley's evidence is that this gate had been locked since at least 1990. Given that a lock on the gate would provide security for the livestock found in the field I have no reason to doubt that this gate was locked prior to or at the time the application was made. Access to the application land via this point cannot therefore be said to have been open.
34. Mr Entwistle's evidence that the application land was fenced prior to and at the time the application was made has not been challenged and the photographs of the application land lend support to that evidence. Having heard that evidence, and considered the documentation submitted and having visited the site, I consider that at the date of the application, the application land was enclosed by fences and walls which had been erected and maintained since at least 1960 when Mr Entwistle's father had taken on the tenancy of the land. It follows that I conclude that the application land was not unenclosed at the time of the application, and that the land was not therefore 'open' as required by the definition found in *Hanmer*.

Uncultivated

35. Mr Entwistle stated that during his and his father's tenancy of the land sheep had been grazed within area A and that weedkiller had been applied as and when necessary and that vermin had also been controlled. Parts of the land had also been used as an area of hardstanding for general farm purposes.
36. Area B had been ploughed and reseeded every 5 years to improve the grass and the field had been rolled to encourage root growth with the pasture being topped every year. The drains and ditches present on the land had been cleansed as and when required and the land was shot for duck and pheasant in season. Around 3 acres of the land had been used by Mr Entwistle's children as a 'figure of eight' motocross track between 1999 and 2010.

37. Area C forms part of the former colliery site¹⁰ at the south eastern corner of the application land. Little evidence was available regarding the details of the remedial works undertaken by Lancashire County Council ('LCC') following its purchase of the land, although it would appear that LCC planted the former pit site as a landscaping exercise to remove an eyesore from a prominent location. In addition to the planting of trees, the former colliery site and the plantation was fenced on all sides. I saw on my site visit that the post and rail fence erected around the colliery site has been supplemented by Mr Entwistle's own fence on the west side and by Mr Foley's fence on the south.
38. Mr Entwistle had been the tenant of area D from 2006 until his purchase of the land in 2012. Prior to entering the land into the HLS scheme, fertilizer and manure had been spread on the land annually and the land had been mowed twice per year to provide winter feed for sheep. Prior to his tenancy in 2006, the land had been farmed by Mr Entwistle's sister and her husband as tenants of Lower Pastures Farm. The management regime practiced by Mr Entwistle during his tenancy followed the regime previously practiced by Mr & Mrs Longworth.
39. A fence and ditch running from the summit of Grey Stone Hill to the plantation at the former colliery site separates Hoddlesden Moss from Orrell Moss and marks the boundary between Mr Entwistle's land and that of Mr Foley. The triangle of land bounded by the boundary fences to the north-east and north-west and by the public footpath to the south is part of the application land situated on Orrell Moss. Mr Foley's evidence is that this triangle of ground is topped annually to aid sheep grazing of the land and that every two or three years a grass crop is taken from the land for winter feed.
40. During the period when the Moss had been tenanted by Mr Entwistle, it had been grazed by sheep for three months of the year during the summer. The Moss has also been managed for sport and there are records of grouse and other shooting having taken place on the Moss throughout the twentieth century. I heard from Mr Bowker and others that prior to 2012, the heather cover on the Moss had been managed by rotational burning to produce a mosaic of strips of heather of different ages. In addition, fire breaks have been created along the fences present on the property. There is evidence that the freeholders of the property employed a gamekeeper to manage the Moss for sporting purposes from at least the end of the Second World War and that the gamekeeper had undertaken the maintenance of the boundary fences and walls, the plantation woodland and the shooting butts along Far Scotland Brook. There is also evidence of substantial drainage works having been undertaken during the 1990s to facilitate a programme of tree planting on specific areas of the Moss.
41. Whether land has been cultivated will be a question of the degree of cultivation. I accept that there are some obvious activities which would amount to cultivation such as ploughing and draining of moorland along with fertilizing of the land and its re-seeding. The objectors directed me to the decisions of various commons commissioners to demonstrate how widely cultivation had been viewed when determining matters under the 1965 Act. In some cases, the establishment of a plantation of trees had been held to constitute

¹⁰ The colliery had closed in 1961

- cultivation and in others, significant and ongoing management and maintenance of the land had been held to be cultivation.
42. With regard to the application land area B has been cultivated by ploughing, re-seeding and rolling. Area A does not appear to have been ploughed although the control of weeds by chemical treatment amounts to the cultivation of the land. Area D has been subject to the application of both chemical and organic fertilizers.
43. Area C and the old colliery site were planted with trees at some indeterminate point after the closure of the colliery in 1961; an area of land to the east of B on the Moss was also planted and fenced during the 1990s. The colliery plantation appears to be unmanaged at the present time and there is no evidence to suggest that the land has been actively managed in the recent past. Whilst the planting of trees has been held to be a form of cultivation, there does not appear to have been any active cultivation or management of the former colliery site at the time of the application, in contrast to Mr Entwistle's continued cultivation of areas A, B and D.
44. Those parts of the Moss which were not subject to Mr Entwistle's formal tenancy had been extensively grazed by him under licence for three months of the year. In addition to the extensive grazing, there is a substantial body of evidence regarding the management and maintenance of the Moss as a suitable habitat for grouse as a game bird. The numbers of grouse present on the Moss appears to have been dependant on the management of the land to produce a suitable habitat as opposed to the land being artificially stocked with birds. Whilst the rotational burning of the heather, the cutting of firebreaks and the control of vermin prior to 2012 had been undertaken for the benefit of the freeholder for the purposes of sport it resulted in a mosaic of mixed-age heather and the maintenance of a semi-natural landscape. There can be no doubt that the Moss has been managed throughout the twentieth century for the purpose of sport by physical means. Although there is no evidence of ploughing or reseeded of the moss or of chemical or organic improvement of the soil, the annual burning of the heather prior to Mr Entwistle's purchase is evidence of the physical management of the land.
45. With the exception of the plantation at the former coal mine the available evidence suggests that the application land has been cultivated by either physical or chemical means for a substantial period of time and that the regular management and maintenance of the land has been the intention of the freeholder and those who held tenancies from that freeholder. The oral evidence to the inquiry was of the continued and continuing cultivation of the land and that such cultivation had been occurring at the date the application was made. With the exception of the plantation woodland on the former colliery site, I am satisfied that the level of management of the land was and is such that the land cannot be said to be 'uncultivated'.

Unoccupied

46. In terms of whether land can be said to be 'unoccupied' the published guidance states that "*land does not cease to be unoccupied (and therefore cease to be waste) merely because it is subject to a tenancy, lease or licence whose sole or principal purpose is to enable the land to be extensively grazed. Occupation requires some physical use of the land to the exclusion of*

others: such might occur if the land were occupied by a quarry, or were improved by a tenant (e.g. by cultivating and reseeded moorland) for his own exclusive use and benefit.” It does not follow automatically that the granting of a tenancy implies that the land subject to the tenancy will be occupied; if a tenant fails to visit the land or make any use of it, it is unlikely that the land could be said to be occupied. For land to be ‘occupied’ it is considered that there must be some exclusivity of physical use by a tenant or owner alone.

47. The documentary evidence in the form of conveyances and leases shows that the application land formed part of the Hoddlesden Estate which was purchased by Alexander Carus Limited in 1920. From 1920 until the sale of the land to Mr Entwistle in 2012, Alexander Carus Limited leased out various parts of the Hoddlesden Estate for agricultural or other purposes. The agricultural leases which encompassed the application land were for the exclusive possession of the demised land and required the land to be farmed in accordance with the principles of good husbandry. The management and maintenance of the land and any improvements made to it would therefore be for the exclusive benefit of the tenant during the period of the tenancy.
48. In the current case, the land in areas A, B and D has been cultivated by Mr Entwistle or by previous tenants with the benefits from that cultivation accruing to the tenants. In addition to being ploughed and rolled, for many years area B also contained a motocross track used by Mr Entwistle’s children. This parcel of land is fenced and there can be no doubt that it was occupied by the Entwistle family at the time of the application. The management regime practiced within areas A and D both by Mr Entwistle and by the Edgeworths before them has been such that the land was also occupied at the time of the application.
49. Area C is leased to LCC on a peppercorn rent as part of the site of the former colliery. There is no evidence that other than planting part of the ground and fencing it securely LCC have undertaken any works recently within the leased ground from which it could be concluded that the tenant is actively occupying the land or was in occupation at the date of the application. Similarly there is little evidence that LCC was occupying the former colliery site in 2011.
50. From Mr Foley’s evidence and from the physical evidence on site it appears that Mr Foley is occupying and has occupied part of the former colliery site as a place to store silage, a place in which he can shelter his sheep and erect lambing pens in February and March. Mr Foley stated that he had been making use of the plantation woodland in this manner since 1995. On the basis of the *de facto* use of the former colliery site, I consider that this part of the land can be said to have been occupied by Mr Foley at the date of the application.
51. As regards that part of the Moss not subject to Mr Entwistle’s former tenancy, I heard from Mr Bowker, Mr Entwistle and from Mrs Townsend of the activities undertaken on the Moss by successive gamekeepers to promote the ground cover on the Moss as a suitable habitat for grouse,

pheasant and other game birds. The evidence is that the rotational burning of heather together with drainage and other works to facilitate game was undertaken for the benefit of the freeholder. Sporting rights were not let out or syndicated and shooting on the Moss was reserved for the freeholder and its invitees. Management of the Moss for sport was therefore undertaken for the sole benefit of the freeholder. I do not consider that the granting of an annual grazing license to Mr Entwistle would have diluted the exclusivity of use of the Moss by the freeholder as the seasonal grazing of land managed for shooting is an adjunct to the management of a habitat beneficial to the development of game birds. To all intents and purposes the management of the Moss for sporting purposes has been 'in hand' for most of the twentieth century and up to the time of the application.

52. Although part of the application land is recorded as access land under the provisions of the 2000 Act this does not mean that that land is not subject to exclusive occupation. Although the public has access to the land via the public footpaths which cross it and can have access over the land on foot, access other than by the public footpaths is subject to restrictions as owners are able to prevent access at certain times in order to carry out certain works. It is not my understanding that access to the land via public footpaths or under the provisions of the 2000 Act is 'occupation' in the *Hanmer* sense; for the purposes of determining whether land is 'waste'; occupation relates to the physical use of the land by a freeholder or tenant to the exclusion of others who may seek to use the land for similar purposes.
53. Taking account of all the evidence, I consider that the land was occupied at the time of the application, either by a tenant farming the land or otherwise using it for his exclusive benefit or by the freeholder managing the remaining part of the land for sporting purposes for its exclusive use.

Summary

54. On the basis of the evidence submitted, the application land has not been shown to be 'open, uncultivated and unoccupied'. Consequently the application land does not, in my view, satisfy the definition of 'waste land' as in November 2011 the land was enclosed, subject to cultivation and occupied.

Conclusion

55. Having regard to these and all other matters raised in the written representations I conclude that, on a balance of probabilities, the relevant criteria for the registration of the application land as common land are not satisfied. It follows that I also conclude that the application should not be granted.

Alan Beckett

Inspector

APPEARANCES

For the principal objectors, Mr & Mr Entwistle

Mr A Evans of Counsel

instructed by Napthens LLP, 7 Winckley
Square, Preston PR1 3JD

Who called:

Mr S Entwistle

Mrs J Entwistle

Mr J Burke

Mrs I Townsend

Mr S Martin

Also in objection:

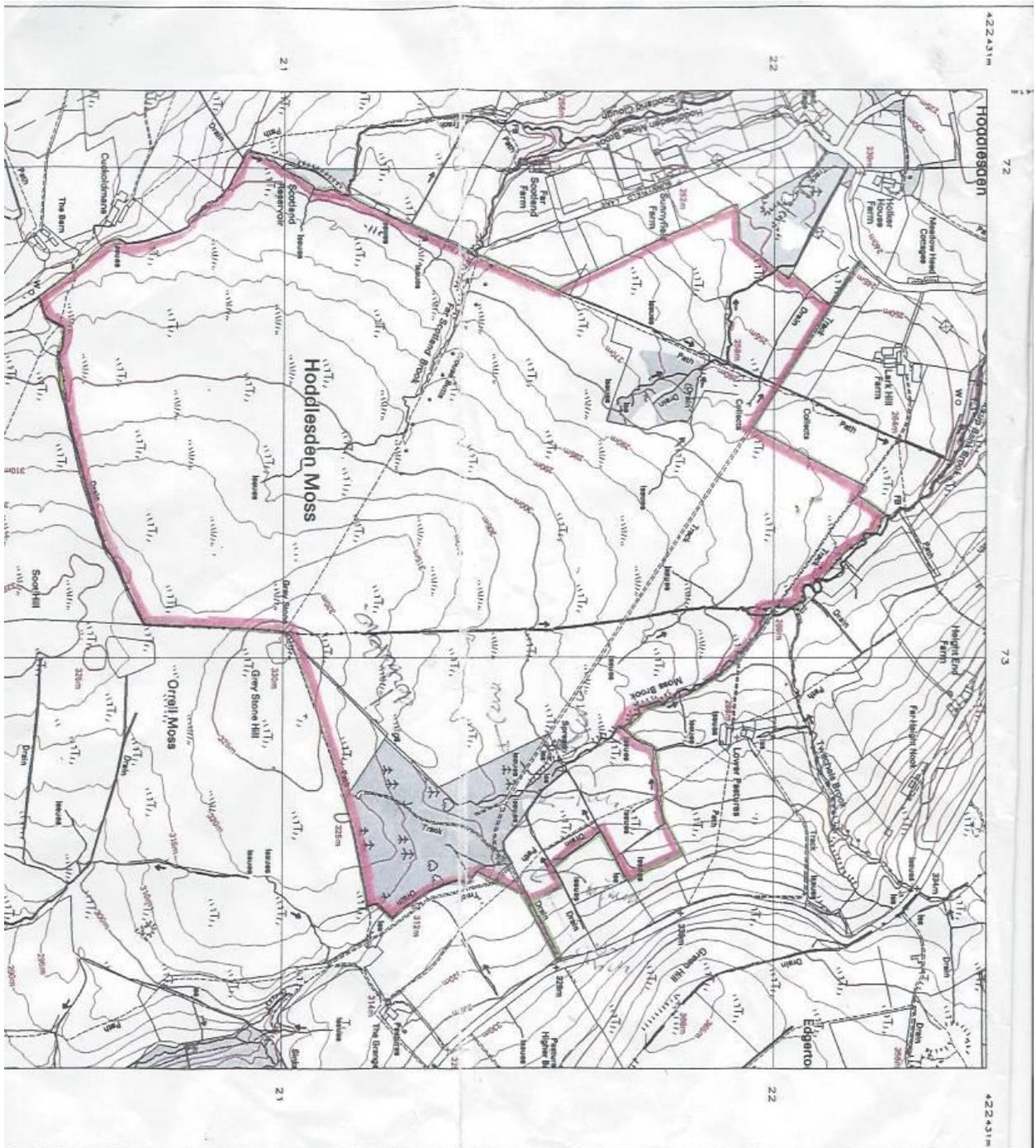
Mr T Foley

Mr R Bowker

INQUIRY DOCUMENTS

1. Plan showing land owned by Mr Foley.
2. Extracts from Carus shooting dairies dated 1947 and 1949 and extracts from Mr Bowker's shooting records for 1995.
3. Photographs of Hoddlesden Moss Colliery.
4. Bundle of documents submitted by Mr Byrne.

APPENDIX A – The application land



APPENDIX B – Areas A, B, C and D

