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## Application Decision

Site visit made on 27 July 2016

**By Alan Beckett BA MSc MIPROW**

**An Inspector appointed by the Secretary of State pursuant to Regulation 4 of The Commons Registration (England) Regulations 2008 to determine the application.**

**Decision date: 1 September 2016**

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### **Application Ref: COM 774**

#### **Land at Glovershaw Lane, Baildon**

Register Unit: CL 349

Registration Authority: City of Bradford Metropolitan District Council

- The application, dated 15 May 2015, is made under paragraph 7 (3) (a) of Schedule 2 to the Commons Act 2006 ('the 2006 Act') to remove land from the register of common land on the grounds specified in paragraph 7 (2) of Schedule 2 to the 2006 Act (other land wrongly registered as common land).
- The application is made by Pennythorn Limited ('the Applicant').

**Decision: The application is granted and the land hatched green and cross-hatched blue on the plan appended to this decision shall be removed from register unit CL 349.**

#### **Preliminary Matters**

1. No objections were made in response to the application. I visited the site on 27 July 2016 and the Applicant made oral representations in respect of the application following the site visit; the Applicant was represented by Mr Vanderman of Counsel and by Mr Walton. Mr Barker was present on behalf of the Commons Registration Authority as a non-participating observer.

#### **The Application Land**

2. The application relates to that parcel of land on the northern side of Glovershaw Lane shown coloured hatched green and cross-hatched blue on the plan appended to this decision which was registered as part of Baildon Common (CL 349) under the provisions of the Commons Registration Act 1965 but which the Applicant contends was mistakenly registered.
3. It was the Applicant's case that at the time the entry was made in the commons register the land at issue was not waste land of the manor of Baildon, nor was it part of Baildon Common. It is contended that the Commons Registration Authority of the day registered the application land as part of the commons and waste lands of Baildon Common which were claimed to have been purchased by Bradford Corporation in 1900 under the authority of the Bradford Tramways Improvement Act 1899. The Applicant argued that the application land did not form part of the 1900 purchase and that at all material times the application land formed part of the public carriageway of Glovershaw Lane.

## **The Main Issues**

4. Paragraph 7 (3) (a) 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 common land. Paragraph 6 of Schedule 2 to the 2006 Act provides that an application can be made where:
  - (a) the land was provisionally registered as common land under section 4 of the 1965 Act;
  - (b) the provisional registration of the land as common land was not referred to a Commons Commissioner under section 5 of the 1965 Act;
  - (c) the provisional registration became final; and
  - (d) immediately before its provisional registration the land was not any of the following –
    - (i) land subject to rights of common;
    - (ii) waste land of the manor;
    - (iii) a town or village green within the meaning of the 1965 Act as originally enacted; or
    - (iv) land of a description specified in section 11 of the Inclosure Act 1845.
5. The application has been made in accordance with the provisions of paragraph 7 of Schedule 2 to the 2006 Act. The main issue is whether the application land was wrongly registered as common land.
6. The onus of proving the case in support of the correction of the register rests with the person making the application and it is for the applicant to adduce sufficient evidence to merit granting the application. The burden of proof is the normal civil standard, namely, the balance of probabilities.

## **Reasons**

### ***Whether the land at issue was provisionally registered as common land under section 4 of the 1965 Act***

7. Register unit CL 349 was provisionally registered as a result of an application made on 29 May 1969 on behalf of the Lord Mayor, Aldermen and Citizens of Bradford by the Town Clerk, Mr H Patten.

### ***Whether the registration was referred to a Commons Commissioner under section 5 of the 1965 Act***

8. The provisional registration of CL 349 was not disputed and so it was not necessary to refer the provisional registration to a Commons Commissioner.
9. The question of the ownership of the application land (or reputed ownership) was considered by a Commons Commissioner under the provisions of section 8 of the 1965 Act. A determination made by Mr C A Settle dated 6 October 1978 was that the City of Bradford Metropolitan Council should be registered as the owners of CL 349. The hearing into the reputed ownership of the land under

section 8 of the 1965 Act does not preclude consideration of the current application.

***Whether the provisional registration became final***

10. The provisional registration of CL 349 was not disputed and that provisional registration became final on 1 August 1972

***Whether immediately before registration the land was not any of the type of land referred to in paragraph 4 (d) (i) to (iv) above***

11. There are no recorded common rights over CL 349. The land was not registered as a village green within the meaning of the 1965 Act as originally enacted, nor is it section 11 land under the Inclosure Act 1845.
12. The Applicant accepted that if the application land was waste land of the manor immediately before registration then the land would be correctly registered as common land. However the Applicant submitted that the documentary evidence adduced does not demonstrate that the land was waste land of the manor at any time prior to the provisional registration.
13. Furthermore, the Applicant contended that the documentary and other evidence demonstrated that at all material times the application land was part of the public highway. As such, registration of the land as common was contrary to section 22 of the 1965 Act. In addition, the Applicant submitted that the registration of the City of Bradford Metropolitan Council as the owner of CL349 was wrong as the available documentary evidence showed that the application land had not been conveyed to its predecessor in 1900.

*Documentary evidence*

*Baildon Tithe map and apportionment 1845/6*

14. The tithe map of 1845/6 shows Glovershaw Lane running between defined boundaries from the crossing of the Glovershaw Beck to Baildon Moor. Within the defined boundaries the land is identified as parcel 813 which is described in the apportionment as 'lane' in the ownership of the Reverend Hodgkinson and occupied by Robert Rhodes. The land is also described as being cultivated for grass and capable of producing a titheable crop. As the land was cultivated and occupied at the time of the tithe survey it is unlikely to have been waste land of the manor.

*Shipleigh Water Works and Police Act 1854*

15. The application land is not shown on the deposited plan as being separate from Glovershaw Lane and the lane and the land within what appear to be the defined boundaries of the lane are identified as parcel 3. This parcel is described in the book of reference as 'Public Highway and Beck and Stream' in the ownership of the Local Board of Health for the Township of Baildon. I consider that as the Lord of the Manor was not identified as having an interest in the land adjacent to Glovershaw Lane, the plan and book of reference provide evidence that the application land was not manorial waste in the mid 19<sup>th</sup> century and is likely to have been considered to be part of the highway of Glovershaw Lane.

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*Bradford Tramways and Improvement Act 1899*

16. The 1899 Act provided authority for Bradford Corporation to acquire Baildon Moor from William Wade Maude, the Lord of the Manor of Baildon. Commercial terms had been agreed between the parties which were set out in the second schedule to the Act and were made binding on both parties. The deposited plan which preceded the Act shows the land at Glovershaw Lane coloured green and identified as parcel 414. In the book of reference parcel 414 is described as 'Waste Lands and Public Highway' in the ownership of William Wade Maude, Baildon Urban District Council, George Beck Metcalfe, John Metcalf, Harry Steel and Arthur Steel and was occupied by George Dewhurst and Samuel Cordingly.
17. The plan deposited with the Clerk of the Peace on 4 August 1899 prior to the passing of the 1899 Act also shows the application land and other land in the vicinity of Glovershaw Lane coloured green in the same manner as the plan described above.
18. The book of reference for the 1899 Act is the only document to describe the application land as 'waste land' and the only document to suggest that the Lord of the Manor had an interest in the land. However, the book of reference does not make it clear the extent of William Maude's interest in the land; leaving aside the Urban District Council's interest in Glovershaw Lane itself, the book of reference shows that there were two other owners or reputed owners who were considered to own the land.
19. Although the book of reference provides some evidence in support of the application land being waste of the manor, I am unable to place significant weight upon it as evidence of the status of the land at the time of the survey as it is by no means clear that the Lord of the Manor was the owner of the land. Furthermore, the book of reference also describes the land as being 'occupied'; if the land was 'occupied' it could not have been waste land of the manor.

*Conveyance of land to Bradford Corporation 1900*

20. The conveyance by which Bradford Corporation acquired the lands of William Maude was completed on 9 April 1900. The lands conveyed were described as those coloured green on the conveyance plan. A certified copy of the plan which accompanied the conveyance was deposited in the West Yorkshire Registry of Deeds on 11 April 1900; this plan does not show the application land as having formed part of the land conveyed to the Corporation.
21. There is clearly a discrepancy between the deposited plans associated with the 1899 Act and the conveyance plan of 1900. As noted above the deposited plan showed that there were six parties who were reputed to be the owners of plot 414; by the time of the 1900 conveyance it would appear that William Maude was not one of those parties. It may be that further inquiries prior to the 1900 conveyance had revealed that the Lord of the Manor had no interest in the application land and was therefore unable to convey that land to the Corporation. I concur with the Applicant that the certified copy of the 1900 conveyance demonstrates that the application land was not in the ownership of William Maude as Lord of the Manor of Baildon in 1900 and therefore was not waste land of the manor at the date of the conveyance.

*Footpath stopping up and diversion order 1966*

22. In 1966 Baildon UDC made a stopping up and diversion order for two footpaths running over land to the north and south of Glovershaw Lane. Copies of the notice of confirmation of the Orders from the London Gazette of 9 September 1966 describe the paths as running to Glovershaw Lane. The Applicant submitted that the points at which these footpaths would have commenced was in the boundary walls which separated Glovershaw Lane from the adjacent farms. In the Applicant's view the description of the paths as commencing at Glovershaw Lane was indicative that the highway extended as far as the boundary walls and was not restricted to that part of the road which had been surfaced.
23. There is no reference within the Gazette notices to the footpaths crossing any land which was separately identifiable as waste or common. I saw on my site visit the former position of the stile which facilitated access from the land at Raines Farm to Glovershaw Lane; that stile had been located in a wall which separated the farm land from the application land. The stile did not provide direct access to the surfaced part of the lane and it is highly likely that the application land between the boundary wall and the metalled surface of Glovershaw Lane was considered at the time to be part of the highway.

*Commons register records*

24. As noted above, the application land was provisionally registered as common following an application made by the Town Clerk of Bradford and that provisional registration being undisputed became final on 1 August 1972. At a hearing into the ownership of the land registered as common, Commissioner Settle heard representations regarding the claimed ownership of the land to the south of the application land outside Glovershaw Farm.
25. In resolving the claim to ownership in favour of the Council, Commissioner Settle stated that "*Mr Castle proved the title of Bradford City Council and I shall accordingly direct the West Yorkshire County Council as Registration Authority to register Bradford City Council as the owner of the land under Section 8 (2) of the Act of 1965*". Commissioner Settle also noted that the land had subsequently been sold to Baildon UDC on 1 November 1969. In the Commissioner's determination of the ownership of CL349, no mention is made of the documents which had been produced by Mr Castle on behalf of the City Council to demonstrate ownership, although at a hearing into the ownership of CL350 held the same day, the City Council had produced a copy of the 1900 conveyance as evidence of its title.
26. If the City Council had produced a copy of the 1900 conveyance to demonstrate ownership of CL350, it is difficult to comprehend what documents Commissioner Settle had seen at the hearing into the ownership of the application land as the 1900 conveyance had not conveyed the application land to Bradford Corporation. The applicant submitted that either the plan which had been produced at the ownership hearing was one of the deposited plans from the 1899 Act or was an inaccurate copy of the 1900 conveyance plan. This particular question cannot be fully answered as Commissioner Settle failed to describe the evidence he had seen which persuaded him that title to the land lay with the City Council. However, I consider that he cannot have been shown the original conveyance plan or a certified copy as that would have shown that

the application land had not been conveyed to the Corporation. If Commissioner Settle had been shown the plans produced in connection with the 1899 Act he may have assumed that the application land had been conveyed to the Corporation when that conveyance had not in fact ever taken place.

#### *Highways records*

27. The application land is currently recorded as publicly maintainable highway and it appears that this land has been included in the Council's List of Streets since local government reorganisation in 1974. No evidence from highways records prior to 1974 has been produced which demonstrates how the land was regarded prior to local government reorganisation. However, given that the Board of Health was considered responsible for the road in 1854 and that the Baildon UDC was considered to have an interest in the land in 1899, it is highly likely that the application land has been part of the highway of Glovershaw Lane for some considerable period of time.
28. Bradford Council acknowledges that it has no ownership interest in the application land beyond that of the highway authority's interest in the maintenance of the highway for public use.

#### *Other evidence*

29. The applicant submitted that other attributes of the application land suggest that the land is part of the highway of Glovershaw Lane and not waste land of the manor. Located within the application land is a substantial brick culvert which allows access to Raines Farm and channels the watercourse that runs east-west under Glovershaw Lane. In addition, there is a high pressure gas main, BT telephone poles, overhead electricity poles and a water main located within the application land. The applicant has found no evidence that common land approvals were sought or granted for such utility works; in the Applicant's view this demonstrates that the verge forms part of the highway and not part of the common.
30. The Applicant also submitted that the boundary of the application land with Raines Farm reflects the development of the highway in relation to the two watercourses which now pass under the road by means of culverts. Prior to the culverting and bridging of these two streams to accommodate motorised traffic the width of the highway would have been such to allow the public to deviate around any temporary obstruction created by the streams being in spate or flood. If the highway had been enclosed by an adjacent landowner the maintenance liability of the enclosed road would have fallen on that landowner if sufficient room to deviate had not been left.
31. The existence of the watercourses and the founderous conditions they may have caused provides a credible explanation of the irregular boundaries of the application land. It is likely that the boundary walls which separate the adjacent land from the application land were constructed to provide sufficient room for the public using Glovershaw Lane to deviate from the normal carriageway so that the responsibility for the maintenance of the highway remained with the public authorities.

*Summary*

32. The documentary evidence adduced demonstrates that the application land was not conveyed to Bradford Corporation as part of its purchase of the waste lands of the manor of Baildon in 1900. Had the land been waste of the manor it would have been capable of being conveyed along with the remainder of the manorial lands. Consequently, if the land was not waste in 1900, it is highly unlikely to have been waste land immediately prior to its provisional registration.
33. The documentary evidence adduced shows, on a balance of probabilities that the application land has formed part of the highway of Glovershaw Lane since at least 1854; this is reflected in the highway authority's records.
34. On the basis of the evidence before me, I am satisfied that the recording of the application land as common land was wrong as the application land was not waste land of the manor immediately prior to its provisional registration. It follows that both the land and ownership sections of the register require correction in respect of the application land.

**Conclusions**

35. Having regard to these and all other matters raised in the papers before me I conclude that as the criteria set out in paragraph 7 of the 2006 Act are met the application should be granted.

*Alan Beckett*

INSPECTOR

APPENDIX – plan not to scale

