



Application Decision

Site visit held 2 July 2019

By Martin Elliott BSc FIPROW

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 determine the application.

Decision date: 27 August 2019

Application Ref: COM/3213682

Maenporth Beach, Falmouth

Register Unit: CL 752

Registration Authority: Cornwall Council

- The application, dated 23 May 2018, is made under Schedule 2 paragraph 4 of the Commons Act 2006 ('the 2006 Act').
 - The application is made by Mr T Hill.
 - The application is to register waste land of a manor as common land in the register of common land.
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Decision

1. The application is approved in part and the land shown hatched on the plan¹ attached to this decision shall be added to the commons register. Land shown cross-hatched above mean high water is to be excluded from the application land.

The Application Land

2. The application land is known as Maenporth Beach. The land is mainly between mean low and high water, although a narrow strip of land falls to the west of mean high water, and comprises sand with boulders and rocks to the north and south.

Main Issues

3. The application has been made in accordance with the provisions of paragraph 4(4) of Schedule 2 to the 2006 Act. The main issue is whether the land is waste land of a manor and whether 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 the following circumstance:

the Commons Commissioner had determined that the land was not subject to rights of common but did not consider whether it was waste land of a manor.

¹ The plan is for information purposes and is not to scale

4. 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.

Reasons

Whether the land had been provisionally registered as common land under section 4 of the Commons Registration Act 1965

5. The land was provisionally registered as common land unit CL 752 on 17 April 1970 following an application from Cornwall County Council (Smallholdings Committee) dated 2 January 1970.

Whether an objection was made to the provisional registration

6. Objections were raised to the provisional registration of CL 752, on 18 September 1970 and 12 March 1971, by a Mr S Billcliffe and His Royal Highness Charles Prince of Wales Duke of Cornwall respectively.

Whether the Commissioner considered if the land was waste land of a manor

7. On 29 October 1980 the Commissioner refused to confirm the registration and did not consider whether the land was waste land of a manor.

Whether the land at issue is of a manor

8. In support of the registration the applicant has submitted a plan from within a survey book of the Manor of Pennance dated 1769. It is contended that the plan clearly identifies the entirety of CL752 to fall within the Manor of Pennance. The land between high and low water is colour washed and an enlarged extract submitted by one of the objectors shows the area to be stippled. The land above and below high and low water is not coloured and above high water, although not particularly clear, the plan suggests that this land forms part of Rosemerrin.
9. In opposition it is asserted that the tithe map and apportionment and the 1910 Finance Act records indicate that the land above high water was not part of the Manor of Pennance. Although I have not seen the tithe map and apportionment for the area, it would appear to be the case that the land above high water is owned by a Charles Fox. I also note that '*Lake's Parochial History of the County of Cornwall*' states that the Manor of Pennance '*is now the property of the representatives of Barclay Fox, Esq.*' Further that there was '*a conveyance of the land in this title and other land dated 18 August 1962 made between (1) Janet Mary Kennedy Fox and (2) The Mayor Alderman and Burgess of the Borough of Falmouth*'. Whilst there is an apparent link between the Fox family and the application land it does not follow that the land would have been managed as part of the Manor of Pennance.
10. Having regard to the evidence before me I do not consider that it has been shown, on the balance of probabilities, that the application land to the west of high water is part of the Manor of Pennance.
11. In respect of the land between high and low water it is noted that whilst other parcels of land shown on the plan are identified with a parcel number and referenced in the accompanying schedules the application land is not so identified. Nevertheless some weight should be given to the depiction of the

land on a plan of the Manor of Pennance. It is seldom possible to prove definitively 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.

12. In opposition it is contended that by virtue of the Great Charter of 1337 the foreshore around Cornwall was granted to the Duke of Cornwall and that much of the foreshore within the Charter remains in the ownership of the Duchy. Consequently it is asserted that there is a presumption in favour of the Duchy as to ownership of the foreshore in the absence of other evidence.
13. I have not been provided with any evidence in support of the objector's assertions. However, and in any event, whilst the land may form part of the Duchy's possessions, and has been managed by the Duchy, that does not preclude the land as being of manorial origin. The issue to be considered is whether the land is, or has been, of a manor.
14. It is noted that the application to register the land in 1971 was resisted by the Duchy and this might demonstrate a belief of the Duchy that the land was not considered to be common land. Nevertheless this provides no evidence as to the status and there is no indication that the manorial origins of the land were investigated at that time.
15. Having regard to the above, the land between high and low water is shown on a plan of the Manor of Pennance. Although the evidence of the land being of a manor is limited to this plan there is no convincing evidence to the contrary. I consider that the evidence is sufficient, on the balance of probabilities, to show that the land is of a manor.

Whether the land fulfils the character of waste land of a manor

16. The term '*waste land of the manor*' has been defined² as "*...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*". The question as to whether land is waste land of the manor is one which must be satisfied at the time of the application.
17. In view of my findings at paragraphs 10 and 15 above it is necessary to consider whether the land between high and low water fulfils the character of waste land of a manor. There is no evidence that the land is enclosed or that the land is cultivated. In respect of occupation this requires the physical use of the land to the exclusion of others. It is noted that the Duchy of Cornwall has managed the foreshore with licences granted to third parties. However, there is no evidence that the land is managed to the exclusion of others and as such the land is unoccupied. Consequently I conclude that the land fulfils the character of waste land of a manor.

Conclusion

18. Having regard to these and all other matters raised in the written representations I conclude that, with the exception of the application land above high water which I have concluded is not land of a manor, the

² Attorney General v Hanmer, 1858

application land fulfils the necessary criteria for registration and consequently I approve the application in part.

Martin Elliott

INSPECTOR

