



## 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**

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**Application Ref: COM/3215544**  
**Part of Cosgarne Common, Twelveheads**

Register Unit: CL 585

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 bounded red on the plan<sup>1</sup> attached to this decision shall be added to the commons register. Land shown in solid black is to be excluded from the application land.

### Preliminary Matters

2. Following the notice of the application three objections were made to the registration of part of the application land. The objections were subsequently withdrawn. A representation was also made by the registered owner of the land (the interested party). Whilst all objections have been withdrawn my decision must be based on the evidence before me measured against the relevant criteria.
3. The initial application was for the registration of 1.526ha. However, following the objections the application was amended so as to relate to 1.413ha. Representations have been made by the interested party that all the application land, including the land excluded from the amended application, should be registered. Whilst I note the representations in respect of the land now excluded from the application I have been appointed to determine the application before me. The registration of the land excluded from the application is not a matter for my consideration. The objectors did not object to the registration of the land subject of the amended application with the exception of two small areas of land at the north west end of the application land.

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<sup>1</sup> The plan is for information purposes and is not to scale

## **The Application Land**

4. The application land is known as Cosgarne Common in Twelveheads. The land is mainly scrub with small areas of grass and is bounded to the west by a public vehicular highway and to the east by the River Carnon. The land at the north-western end of the land which was part of the original application land forms part of the properties known as Penford and The Victory. It is noted from the submissions that this land is registered in the ownership of the interested party although it appears the ownership of this section is subject of a claim for adverse possession. The ownership of the land is not a matter for my consideration.
5. In respect of the two small areas of dispute which were subject of the subsequently withdrawn objection, the most northerly section is made up of a triangular piece of grass which falls outside the boundary of the two properties identified above and a section of a broad coniferous boundary hedge. The second area of dispute forms the driveway to the two properties. This land has been surfaced and contains mown verges. It would appear from the evidence before me that the mown verges and tarmac surface are recent additions as photographs submitted by the applicant in 2018 show this area to be partly surfaced in tarmac and partly with stone/hardcore. The driveway is gated at the north-eastern end.

## **Main Issues**

6. The application has been made in accordance with the provisions of paragraph 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:

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)<sup>2</sup>.
7. 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***

8. The land was provisionally registered as common land unit CL 585 on 24 February 1970 following an application from the Ramblers' Association dated 2 January 1970.

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<sup>2</sup> Paragraph 4 (5) of Schedule 2 to the 2006 Act

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**Whether an objection was made to the provisional registration**

9. Objections were raised, on 24 September 1970 and 12 January 1971, to the provisional registration of CL 585 by Wheal Jane Limited and the Rt. Hon Viscount Falmouth respectively.

**Whether the provisional registration was cancelled in the circumstances specified in paragraph 4 (5) of Schedule 2 to the 2006 Act**

10. On 8 October 1979 the Commissioner refused to confirm the registration on the basis that the parties agreed the terms of the decision.

**Whether the land at issue is of a manor**

11. There is no dispute that the land at issue is of a manor. I am satisfied that from the evidence before me the land forms part of the Manor of Cosgarne with the 1838 tithe map and apportionment identifying the land as '*Commons, Wastes, And Roads*'.

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

12. The term 'waste land of the manor' has been defined<sup>3</sup> 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.
13. With the exception of the two areas of land identified at paragraph 5 above it is not disputed that the land subject of the amended application fulfils the character of waste land of the manor.
14. In respect of the two areas of land identified above the most northerly section (the triangular area) is a grassed area immediately adjacent to the highway. Whilst the land is bounded to the highway side by a line of white stones it is not occupied to the exclusion of others. Although the area is grassed this does not amount to cultivation. It is not fully enclosed in the property known as The Victory as suggested in one of the original objections. As such this section satisfies the relevant test. In respect of the strip of land forming part of the boundary hedge of the property this is not open as it is occupied by a mature hedge forming the boundary of the property.
15. As regards the driveway to the two properties it appears to me that this land was, at the time of the application, to some degree developed and improved. In my view this land does not fulfil the character of waste land. On my site visit I also noted an area of land immediately to the south of the driveway which forms the boundary hedge (coniferous) of the properties and also encloses part of the application land. Again I do not consider that this land fulfils the character of waste land.
16. Having regard to the above, whilst the majority of the application land fulfils the character of waste land the three areas identified at paragraphs 14 and 15 fail the character test and should therefore be removed from the application land.

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<sup>3</sup> Attorney General v Hanmer, 1858

**Other Matters**

17. The interested party raises no objection to the registration of the land subject to the acknowledgement of a bridleway over the land and a small lay-by used for short term parking which it is requested is maintained as a facility. Whilst I note these issues they are not matters for my consideration. The relevant criteria are set out at paragraph 6 above.

**Conclusion**

18. Having regard to these and all other matters raised in the written representations I conclude that, with the exception of the areas which I have concluded do not fulfil the character of waste land of the manor, the application land fulfils the necessary criteria for registration and consequently I approve the application in part.

*Martin Elliott*

INSPECTOR

