



Application Decision

Hearing held on 16 October 2019

Site visit made on 15 October 2019

by Susan Doran BA Hons MIPROW

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

Decision date: 13 November 2019

Application Ref: COM/3220041

Poors Land Allotments (Poor Lots Allotments), Cadishead, Manchester

Register Unit No. CL6

Registration Authority: Lancashire County Council

- The application, dated 23 May 2018, is made under Schedule 2(7) of the Commons Act 2006 to remove other land wrongly registered as common land.
 - The application is made by Salford Allotment Federation.
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Decision

1. The application is granted and the land, register unit CL6, edged and hatched blue on the plan appended to this decision shall be removed from the Register.

Preliminary matters

2. I held a hearing into the application at Buile Hill Park Hall, Salford on 16 October 2019, having made an unaccompanied visit to the application site on 15 October. At the hearing none of the parties required me to revisit the site, and there were no issues that necessitated a further inspection.

Main Issues

3. Paragraph 7(2) of Schedule 2 to the 2006 Act provides that any person may apply to the Commons Registration Authority to remove land from the register of common land where:
 - (a) the land was provisionally registered as common land under section 4 of the 1965 Act¹;
 - (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;

¹ The Commons Registration Act 1965

- (iii) a town or village green within the meaning of the 1965 Act as originally enacted; or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.
4. 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 show on the balance of probabilities that it should be granted. The main issue is whether the application land was registered as common land in error.

Reasons

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

5. Register unit CL6 was provisionally registered further to an application made on 2 February 1967 by Irlam Urban District Council. A notice dated 26 September 1968 in The London Gazette lists provisional registrations for Lancashire County Council and how to object to them and includes register unit CL6.

Whether the provisional registration of the land as common land was referred to a Commons Commissioner under section 5 of the 1965 Act

6. The provisional registration of CL6 was not disputed, so it was not necessary to refer it to a Commons Commissioner. However, the question of ownership was considered by a Commons Commissioner under the provisions of section 8 of the 1965 Act, and a direction made by A A Baden Fuller on 29 November 1972 that Irlam Urban District Council be registered as owners of the land.

Whether the provisional registration became final

7. The provisional registration, as undisputed, became final on 1 October 1970.

Whether immediately before its provisional registration the land was not any of the following:

Land subject to rights of common

8. There are no registered rights of common over the application land.
9. Further to the Inclosure Act of 1849, the application land was held in trust for the labouring poor of Cadishead under an Inclosure Award of 1856, approved by the Inclosure Commissioners. Accordingly, the land, part of Cadishead Moss, which formerly had been open was enclosed (fenced)² for use as allotments for the poor for which an annual rent was charged. A 1908 Ordnance Survey ('OS') map annotates the land (a little over 5 acres in area) as 'Allotment Gardens'.
10. Management of the land transferred to Irlam Urban District Council in 1914³. Until 1968, the whole of the application site comprised allotment gardens, numbering 70 in total. However, in 1968, 22 allotments were grassed over and the land used as public open space. This followed consent from the Minister of Housing and Local Government for the appropriation of part of the land for such purposes.

² At least from the adjoining occupation roads

³ By an Indenture of July 1914 between the Overseers, Allotment Wardens, Board of Agriculture and Irlam Urban District Council

11. On balance, the evidence points to the land having enjoyed rights of common prior to its inclosure in 1856, when it may have been dug for peat by locals, but from 1856 up to and immediately prior to its provisional registration it comprised allotments and was not subject to rights of common.

Waste land of the manor

12. Waste land of the manor is open, uncultivated and unoccupied land of the manor, other than the demesne lands of the manor⁴.
13. A plan showing a land parcel allotted to the labouring poor carrying the annotation 'Lord of the Manor' is of unknown provenance. However, what it shows is consistent with the description of the map annexed to the Inclosure Award as described in 'Cadishead Allotment Land', a document submitted both by the applicant and the objectors. Furthermore, I understand the land was allotted under the Award to the churchwardens and overseers of the poor⁵ for allotments, so likely to be subject both to cultivation and occupation.
14. A catalogue of the Bridgewater Estate deeds of title refers to papers of the Cadishead Estate, comprising Cadishead Manor and properties in Barton upon Irwell township, dating between 1688 and 1961. Prior to its ownership by the Bridgewater Estate, the manor of Cadishead was owned by the Poole family. These references suggest the application land once formed part of the land of the lord of the manor. However, in 1972 the Commons Commissioner, Mr Baden Fuller, determined (in his report) that Irlam Urban District Council was the owner of the land, and they (or their predecessors) had been since 1895.
15. On balance, I consider the evidence supports the finding that immediately before registration the land was not waste land of the manor.

A town or village green within the meaning of the 1965 Act as originally enacted

16. A town or village green is land which has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality or on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes, or on which the inhabitants of any locality have indulged in such sports and pastimes as of right for not less than 20 years⁶.
17. The 1972 Commons Commissioner's report about land ownership refers to the decision dated 5 March 1968 by the Minister of Housing and Local Government to appropriate part of the application land for open space. The date that part of the application land became open space coincides with, or around the time, the land was provisionally registered as common land under the 1965 Act.
18. The evidence indicates that this part of the application site, its south-west corner, formed part of the original land area allotted to the poor in 1856, and later shown on OS mapping as Allotment Gardens. There is no evidence to suggest this land was acquired subsequent to the Inclosure Award. In addition, it became open space at or about the same time the land was registered as common land. There is no evidence to suggest that it had been allotted for use by the inhabitants of the locality for recreation, or that a customary right to engage in lawful sports or pastimes was exercised. Indeed, until 1968 the land

⁴ Attorney-General v Hanmer [1858]. Demesne land is land within the manor retained by the lord of the manor for their own use

⁵ Of the township of Barton upon Irwell

⁶ Section 22 of 1965 Act

had been subject to several allotments and, although it would appear that they were unused at that time, there is nothing to suggest the inhabitants had engaged in lawful sports and pastimes on that land as of right for a period of not less than 20 years before 1968, or thereabouts.

19. It follows, on balance, that the land did not form a town or village green immediately before registration.

Land of a description specified in section 11 of the Inclosure Act of 1845

20. Having been set out as allotment land for the poor suggests it was not land as described in section 11 of the 1845 Act, and this has not been argued.

Conclusions on the evidence

21. The application land is eligible for deregistration under paragraph 7 of Schedule 2 as in this case it was provisionally registered as common land under section 4 of the 1965 Act, and its provisional registration was not referred to a Commons Commissioner. A hearing was held into its ownership under paragraph 8 of the 1965 Act, but this does not preclude my consideration of the application.
22. An application will succeed only if it can be shown that before its registration, the land was not common land (whether subject to rights of common or waste land of the manor), nor a town or village green within the meaning of the 1965 Act as originally enacted, nor within the definition of land subject to be inclosed under section 11 of the Inclosure Act 1845. This ensures that land cannot be removed from the registers if, at the time of its registration, it was (among other things) a regulated pasture⁷. Although the applicant has not adduced copies of the Inclosure records or documents relating to the change of use of part of the application land, from the evidence provided, including the 1970 report of the Commons Commissioner which described their content, I conclude on the balance of probabilities that the tests set out in paragraph 7(2) of Schedule 2 of the 2006 Act have been met, and the application succeeds.

Other matters

23. An OS map extract shows a track running, in part, along the rear of properties on Lynthorpe Avenue, which it is argued should be retained. However, this has no bearing on the decision before me. Neither do a variety of issues raised in objections concerning the current management of the land, in particular land drainage and uncultivated plots, the allocation of plots and allotment rules, parking issues, impact on wildlife and habitat, the alignment of the public right of way passing through the site, and security. I appreciate these concerns are important to those raising them. However, they are not matters I can take into account in applying the relevant tests in this case.

Conclusions

24. Having regard to these and all other matters raised at the hearing and in the written representations, I conclude that the application should be granted.

S Doran

Inspector

⁷ Land owned in common by several persons who also use the land in common at certain or all times of the year.

APPEARANCES

For the Commons Registration Authority

Annie Surtees Salford City Council

The Applicant

Don Booth Salford Allotment Federation

Alan Cavanagh Salford Allotment Federation

Objectors

Julian and Susanna Matthews Local residents

Interested parties

Geoff Hamilton Salford Allotment Federation

DOCUMENTS

1. Handwritten notes of local amateur historian Cyril Wheeton, concerning Cadishead Poor Lots, submitted by Salford Allotment Federation