



Application Decision

Site visit on 30 October 2019

by **Mark Yates BA(Hons) MIPROW**

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

Decision date: 9 January 2020

Application Ref: COM/3221453

Land at Carn Brea, Cornwall

Register Unit: CL 332

Registration Authority: Cornwall Council

- The application, dated 5 August 2018, is made under paragraph 4 of Schedule 2 of the Commons Act 2006 ("the 2006 Act").
 - The application was made by Mr T. Hill on behalf of the Open Spaces Society ("OSS").
 - The application is to register waste land of the manor as common land.
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Decision

1. The application, as amended, is approved. The land coloured blue on the supplementary plan attached to this Decision shall be added to the register of common land.

Preliminary Matters

2. An Inspector approved an application to register land at Carn Brea as common land on 21 April 2015¹. The OSS have applied for the remainder of the land in this locality to be registered as common land.
3. The OSS requests that the application is amended to remove the land shown uncoloured on the supplementary plan. There is no specific provision within the 2006 Act for the amendment of an application once it has been duly made. However, attention is drawn to the case of *Oxford County Council v Oxford City Council & Anor [2005] EWCA Civ 175*. At paragraph 104 of the judgment, Carnwath LJ agreed with the Inspector's conclusions regarding a proposed amendment to an application made under Section 13 of the Commons Registration Act 1965 ("the 1965 Act"). The Inspector had concluded that the county council had the power to allow an amendment where it was reasonable to do so. This approach was endorsed by Lord Hoffman when the House of Lords considered an appeal involving this case.
4. I agree with the OSS that there is no reason why the above could not also apply to an application made under the 2006 Act. It would be reasonable to not determine the part of the application for which there is no longer any support. The proposed modification to the application led to the withdrawal of

¹ Planning Inspectorate Ref: COM 624

the objections from those parties with an interest in the land and the scheduled hearing was cancelled. I have therefore determined the application from the written representations of the parties. In reaching my decision, I have not had regard to the land shown uncoloured on the supplementary plan.

5. In terms of the potential for an award of costs to be made, costs can only be awarded where a public inquiry is held.

Main Issues

6. The main issues are whether the land is waste land of a manor and whether before 1 October 2008:
 - (a) the land was 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 the circumstances specified in sub-paragraph (3), (4) or (5).
7. In this case, reliance is placed upon sub-paragraph (3) which provides that land may be added to the register of common land where:
 - (a) the provisional registration was referred to a Commons Commissioner under Section 5 of the 1965 Act;
 - (b) the Commissioner determined that, although the land had been waste land of the manor at some earlier time, it was not such land at the determination because it had ceased to be connected with the manor; and
 - (c) for that reason only the Commissioner refused to confirm the provisional registration.

Reasons

The procedural requirements of Paragraph 4 of Schedule 2

8. An application was made on 25 June 1968 to register the land as common land and it was provisionally registered within register unit CL 332. An objection, dated 23 June 1972, was made to this application on the ground that the land was not common land.
9. A Commons Commissioner held a hearing into the provisional registration of the land on 6-7 October 1980. The Commissioner concluded that the land had ceased to be connected to the manor of Tehidy and this was the reason for the refusal to confirm the registration. Therefore, the provisional registration was cancelled in the circumstances specified in sub-paragraph (3).

Whether the land has a manorial origin

10. It is apparent from the Decisions of the Commissioner and the previous Inspector that the land at Carn Brea was viewed as being of manorial origin. Nothing has been provided to persuade me to take a different view. The applicant has submitted a 1737 plan of part of the manor of Tehidy to provide further support for this being the case.

Whether the land is waste land of a manor

11. The definition of waste land of a manor arising from the case of *Attorney-General v Hanmer* [1858] is “*the open, uncultivated and unoccupied lands parcel of the manor other than the demesne lands of the manor*”. Demesne land is land within a manor owned and occupied by the lord of the manor for his own purposes. For land to be occupied it is considered that there must be some exclusivity of physical use by a tenant or owner alone.
12. In terms of the land now under consideration, nothing has been provided to show that it did not fit the definition of waste land of the manor at the time of the current application. Nor is there anything to suggest that there has been any material change affecting the land since this application was submitted. It was evident from my visit to the site that the land is open, uncultivated and unoccupied. It follows that I consider the land is waste land of the manor.

Other Matters

13. A number of matters have been raised in relation to the impact of the land being registered as common land. However, these issues are not relevant to the statutory tests outlined above.

Conclusion

14. Having regard to these and all other matters raised in the written representations I conclude that the amended application should be approved.

Mark Yates

Inspector



Land shaded green is registered as unit CL 332 in the Register of Common Land held by Cornwall County Council.



Land shaded blue is the land referred to in the application.



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ON BEHALF OF



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Site: Grid Ref. SW686408
Carn Brea Castle
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Project
Commons Act 2006,
Schedule 2, Paragraph 4

Title
Application Plan: Carn Brea Common
Drawing No. 1 Issue: 1
Scale 1:500 when printed at A3
Date 05 September 2019

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