



Application Decision

Site visit made on 6 July 2020

by Heidi Cruickshank BSc MSc MIPROW

Appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 13 August 2020

Application Ref: COM/3227812

Land at Carn Marth, Cornwall

Register Unit No: CL 331¹

Commons Registration Authority: Cornwall Council

- The application, dated 5 August 2018, is made under paragraph 4 of Schedule 2 of the Commons Act 2006.
 - The application is made by Mr T Hill on behalf of the Open Spaces Society.
 - The application is to register waste land of a manor in the Register of Common Land.
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Decision

1. The application is approved in part. The land outlined and cross-hatched in pink on the plan attached to this decision shall be added to the Register of Common Land ("the RCL"). The area of around 2.25 square metres occupied by the electricity blockhouse is excluded, with the approximate location shown.

Procedural Matters

2. This application, made by the Open Spaces Society ("the OSS") was first to be heard on 28 January 2020, however, this was postponed at the request of Carn Marth Trust ("CMT"). A hearing was then organised for 29 April 2020, but restrictions introduced as a result of Covid-19 meant that this was not possible. Having considered the submissions I was satisfied that it would be appropriate to make a decision on those papers without the need for a hearing, although still requiring a site visit. The parties were contacted regarding this proposed way of working, with an opportunity for additional information to be submitted.
3. On the day of the proposed hearing a further objection was received. All submissions were circulated to provide a final opportunity for comments and the parties were informed that an unaccompanied site visit was planned. I made an unaccompanied visit to view the land subject of the application.

The Application Land

4. The land is an area of around 3 hectares situated to the north of the village of Lanner, south-east of the town of Redruth. The application relates to land claimed under register number CL 331 in the 1960s, as discussed below. Part of the original claim was registered; the land subject of this application lies adjacent to that already registered common land.
5. The registered land to the north of the application area is recorded as a bridleway, which leads to a larger area of registered land to the north-west. The strip of registered land generally situated south of the application is

¹ Original common land register number

- recorded mainly as a bridleway, with the eastern most section a footpath; this bridleway continues north through the application land to join the northern bridleway mentioned above. The bridleways are generally rough stone access tracks, clearly with some vehicular use, whilst the eastern footpath is a narrower grassed track.
6. The southern bridleway is a more 'made' track at the western end, providing access to the amphitheatre, with an indication that this was laid by Penventon at the time of quarrying. A supporter to the application indicates that the southern bridleway is not recorded as common land on the Government's MAGIC website whilst in objection it was suggested this was not suitable for recording as common land. I rely on the Registration Authority² for information in relation to identification of the common land; their mapping shows that it is already recorded as such and so it is not part of the application.
 7. The 2018 application excludes an area identified as Carn Marth Open Air Theatre ("the amphitheatre"), which was part of the original area provisionally recorded on the RCL. The Amphitheatre lies within an old quarry, with access on foot freely available from the southern bridleway. An adjacent gate would provide controlled access for vehicles. There are stone/grass 'seats' built around a natural 'stage' area. Due to topography the amphitheatre forms a discrete area, separated from the surrounding land. I agree with the parties that this land can reasonably be considered to be occupied, so falling outside the criteria allowing it to be registered, as set out in the Main Issues below.
 8. Objections have been made to the registering of an area south-west of the amphitheatre which I understand is used as a carpark during performances, with access from the southern bridleway. I understand this area to have been formed by a bund constructed in the 1990s, which is overgrown with brambles. CMT referred to the access as a locked gate, however, the gate was unlocked, although overgrown and difficult to open, at the time of my site visit. The area is a mix of scrubby grassland and low shrubs with open areas down to bedrock.
 9. There were concerns about registering the land on which a blockhouse was constructed to house the electricity supply supplying the amphitheatre. This is on a small area lying to the west of the amphitheatre and north-west of the carpark area.
 10. Objection was also raised to the registering of the pond in the north-east corner of the application land, which is a flooded quarry. There is direct access to the pond from the northern bridleway, whilst on the southern edge the quarrying out results in significant drops from the land to the water level.
 11. I understand that CMT, a registered charity, owned the land at the time of the application. It was indicated that CMT were in negotiations with Lanner Parish Council ("the Parish Council") to transfer ownership of the land to the Parish Council but I do not know whether the ownership transfer has been completed. The Parish Council objected separately to the application.
 12. With the exception of a small area lying south-east of the junction of the bridleway and footpath and the pond to the north-west of that all the application land, including the amphitheatre, is recorded as Access Land under the Countryside and Rights of Way Act 2000. There is additional land in the

² Cornwall Council

area, including that currently registered as CL 331, which is also recorded as such. The Registration Authority confirmed that access to the land would be afforded under section 193 of the Law of Property Act 1925. As indicated by a supporter to the application this would include access for equestrian use.

13. The land has the general appearance of moorland with bracken and low shrubs the main vegetation. There are occasional open grass areas, some worn by the users, with the rights of way in particular being obvious due to use.

Main Issues

14. The application has been made in accordance with the provisions of paragraph 4 of Schedule 2 to the Commons Act 2006 ("the 2006 Act"). Cornwall Council, the Commons Registration Authority ("the CRA") have confirmed that the application has been processed in accordance with the relevant regulations.
15. The main issue is whether the land is waste land of a manor, at the date of the current application, and whether before 1 October 2008:
- a) the land was provisionally registered as common land under section 4 of the Commons Act 1965 ("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-paragraphs (3), (4) or (5).
16. Sub-paragraph (5), on which the OSS relies, requires 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).

Reasons

The requirements of paragraph 4 of Schedule 2

17. Application number 0725 was made by Camborne-Redruth Urban District Council on 25 June 1968 to register the land as common land under the 1965 Act. The land was provisionally registered as unit CL 331 on 8 October 1968. Objection No X1123, dated 10 July 1972, was made by Penventon Concrete Ltd to the land now subject of the 2018 application on the grounds that it was not common land.
18. Entry 2 in the RCL sets out as at 2 February 1973 that the entry was modified under Regulation 8 of The Commons Registration (Objections and Maps) Regulations 1968³. This sets out that "*...a registration authority may...modify a registration to which objection is made...at the request of any person whose application is noted under General Regulation 9(5)⁴, if the person on whose application the registration was made...consent in writing.*"
19. Although there appears to be no record of the written consent to modify the registration, notification would have to be given by the registration authority and there is nothing to suggest that the process was not carried out correctly. Note 3 in the RCL shows that the modified registration became final on 20th October 1972.

³ UK SI 1968 No. 989

⁴ The objection X1123 fulfils this requirement

20. I am satisfied that the provisional registration for the 2018 application land was cancelled before 1 October 2008, in the circumstances specified in paragraph 4(5) of Schedule 2 to the 2006 Act.

Whether at the time of the current application the land was waste land of a manor

21. The documents presented in relation to the application before me support the contention that the land under consideration was of manorial origin. No argument has been raised that the application land was not of a manor at the time of the application. The evidence provided with the application showed that the land lies within the former Manor of Pennance.
22. The definition of waste land of a manor arising from the case of *Attorney-General v Hanmer [1858]*⁵ is “*the open, uncultivated and unoccupied lands parcel of the manor other than the demesne lands of the manor*”. Demesne land is that owned and occupied by the lord of the manor for his own purposes. For land to be occupied there must be exclusive use of it by a tenant or owner.
23. I agree with the applicant that most of the land is ‘open’ as it is unfenced to the rest of the registered common. There is a ditch marking the edge of the larger registered area to the north-west, but this feature does not form a barrier between the areas of land.
24. The Parish Council were of the view that as the land had been subject to considerable management, protection and improvement it was not waste land. Whilst there may have been works over the years the land is of the same, or similar, type as the registered common; it appears to be in a natural vegetative state, with minimal intervention. There is no evidence that it is being actively used to produce a crop and, I am satisfied that is ‘uncultivated’ for the purposes of the meaning of the 2006 Act.
25. CMT argue that the land they use as a carpark is fenced and so not open or unoccupied. The applicant argues that the locked gate allows access around the side, although I found the gate unlocked in any case. I consider that the area is difficult to access without using the gate, but it is open to the surrounding land, regardless of the bund and overgrowth. There is no evidence of exclusion of others from using the land, albeit that during performances there may be cars parked, in particular for disabled visitors. I do not consider this land to be cultivated and so I am satisfied, on balance, that this area should be registered as part of the common. This would not prevent continuation of the historic use of the area for parking during performances in the amphitheatre.
26. Although the electrical blockhouse is a very small area, approximately 1.5 x 1.5m, by its very nature it occupies the land to the exclusion of others and so does not fulfil the criteria as waste land. It was argued that the immediate area around, or curtilage to, the blockhouse should be excluded from the land to allow further works and/or expansion in the future. There is no obvious curtilage to this building, as can be seen in the photograph supplied by the applicant. During my site visit I found it difficult to locate the blockhouse at all as the land was so overgrown. I am not satisfied that there is associated land

⁵ 27 LJ Ch 837

that should be excluded from the application, but I am satisfied that the small area of the electricity supply building should not be registered.

27. In relation to the pond CMT said that it could need fencing for Health and Safety reasons; however, I cannot consider what may happen in the future, only the application as it is at this time. I note that the pond is said to be purposefully stocked with fish, for the improvement of angling and the enjoyment of anglers, although there is no evidence in relation to stocking densities. I understand there to be some management with the control of invasive species. A volunteer bailiff was present at the time of my site visit, whom CMT indicate is proactive in management for access and safety.
28. I consider that 'uncultivated' is a term understood in normal everyday use to relate to land rather than water. It is not unusual for common land to include water bodies, with a right of piscary – the right to fish - being one that can be recorded on the CLR. Taking all matters into account I am satisfied that the pond should be included in the registration.

Other matters

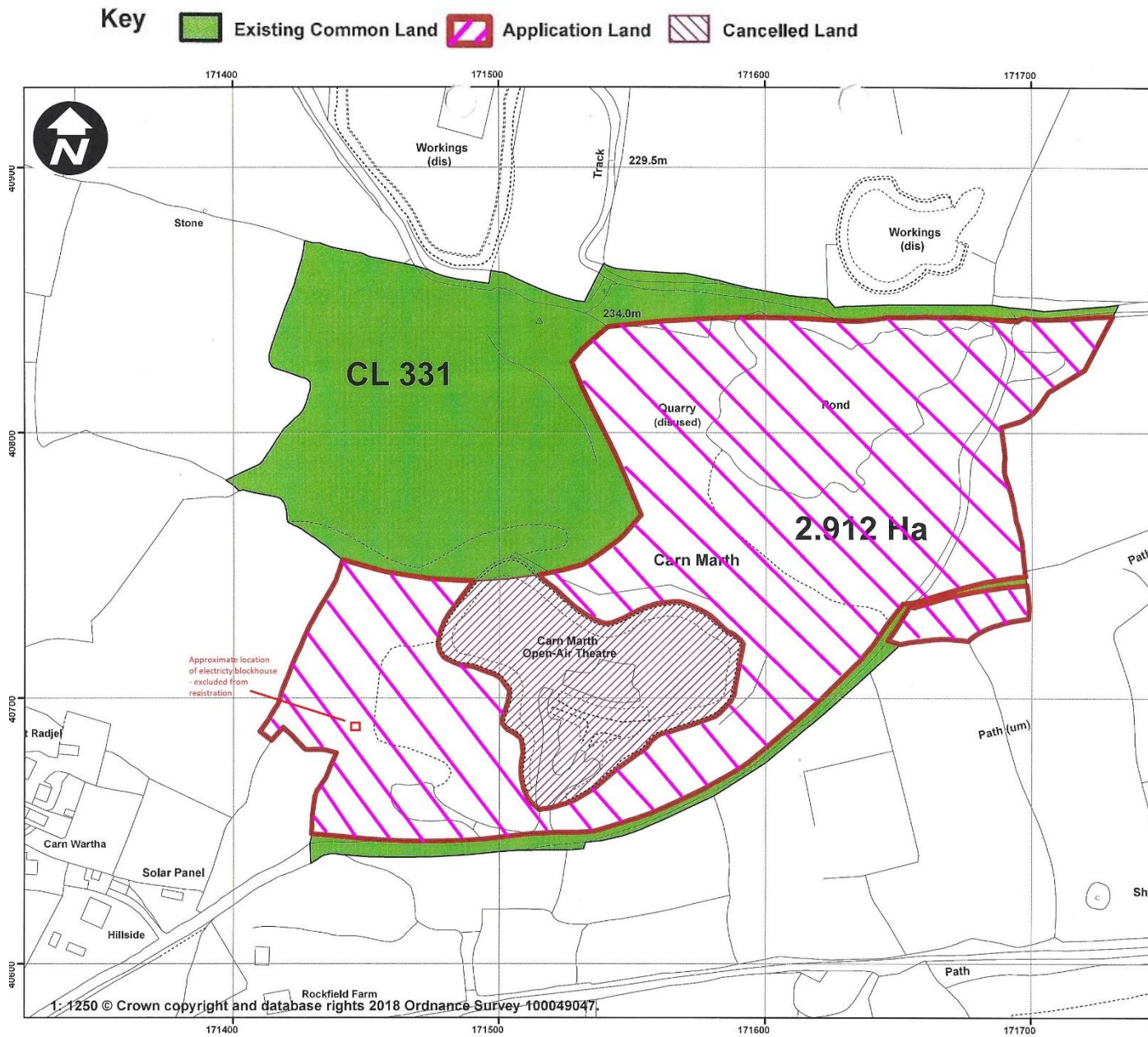
29. I note the concerns that the registration of the land would add an unnecessary level of bureaucracy to the wardship of the land and additional costs to CMT, which is a small conservation Trust working to preserve the natural habitat of Carn Marth on a limited budget. The land would be passed to the Parish Council with the same remit and so it was felt there would be no material benefit to the land or the community from the registration. There was concern that it would cause complications in the administration and management of the land, adding another layer of bureaucracy and potential unnecessary cost.
30. The OSS responded to these concerns in their statement of case, setting out that applications for works restricting access to common land does not currently require the payment of fees; works, such as gates, present on the land at the time of registration would not require consent; and, registration would not affect the management of the site to control invasive species.
31. I have been informed that Carn Marth was recognised as a major and valued recreational open space in the parish in the council's Local Development Plan. Registration as common land would not alter this.
32. Whilst I understand the desire for matters to remain as they are, and the argument of the OSS that it would make little difference, the tests that I must apply are those set out above. As a result, I have not been able to place weight on these issues in reaching my decision on this application.

Conclusions

33. Having regard to these and all other matters raised in the written representations, I conclude that the criteria for the registration of the application land as common land under paragraph 2(4) of the Schedule 2 to the 2006 Act has been met, with the exception of the small area of the electricity blockhouse. The application should be approved in part.

Heidi Cruickshank

Inspector



PLAN NOT TO ORIGINAL SCALE