



Application Decision

Site visit made on 1 December 2020

by Rory Cridland LLB (Hons), Solicitor

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

Decision date: 30 December 2020

Application Ref: COM/3243157

Application to deregister part of VG99, Churchlea, Broadwoodwidge, Devon

Register Unit: VG99

Registration Authority: Devon County Council

- The application, dated 12 July 2019, is made under Schedule 2 of the Commons Act 2006 ("the 2006 Act") to remove land from the register of town or village greens on grounds specified in paragraph 8(2) of Schedule 2 to the 2006 Act (buildings registered as town or village green).
 - The application is made by Mrs Diana Towers.
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Decision

1. The application is refused.

Preliminary Matter

2. The Council has referred the application to the Planning Inspectorate in accordance with Regulation 26 of The Commons Registration (England) Regulations 2014.

The Main Issues

3. Paragraph 8 of Schedule 2 to the 2006 Act provides that land can be removed from the register where:
 - (a) the land was provisionally registered as a town or village green under section 4 of the Commons Registration Act 1965 ("the 1965 Act");
 - (b) on the date of the provisional registration the land was covered by a building or was within the curtilage of a building;
 - (c) the provisional registration became final; and
 - (d) since the date of the provisional registration the land has at all times been, and still is, covered by a building or within the curtilage of a building.
4. The main issue is therefore whether the above criteria have been met.

Reasons

Whether the land was provisionally registered as a town or village green under section 4 of the 1965 Act and whether the provisional registration became final

5. The extracts of the register provided by the Council show that the application land was provisionally registered as a town or village green on 2 February 1970. The

provisional registration became final on 5 July 1973. I am therefore satisfied that criteria (a) and (c) are met.

Whether on the date of the provisional registration the land was covered by a building or was within the curtilage of a building

6. VG99 is located in the village of Broadwoodwidge. It consists mostly of open, accessible land. The application land, however, currently forms part of the garden of Churchlea Barn, a residential dwelling located to the south of the main area of village green. It is separated from the rest of VG99 by a boundary hedge which runs along the property's northernmost boundary. Access is provided via a gate.
7. At the time of provisional registration, Churchlea Barn formed part of what was then Town Farm and consisted of a three-storey stone building used for variety of agricultural purposes ("the main barn"). Various editions of the OS Map published before 1970 (as well as the register map) show structures which correspond with the approximate location of the main barn, Town Farm farmhouse (located south of the main barn) and the old school room. However, they also show the application site free from buildings and with a continuation of the track leading off VG99, albeit with a boundary feature in the approximate location of the existing boundary hedge.
8. This changes on the 1974 edition OS Map where two buildings are shown to the rear of the main barn, one of which extends out into the application site. However, while I note the applicant's assertion that the building shown had already been erected at the time of provisional registration, there is little evidence which would indicate that this was the case. Undated aerial photographs supplied by the parties show that originally this building was erected outside the application land and was subsequently extended into the application site. They do not, however, shed any light on when the extension occurred.
9. While I note the sworn statement made in 1978 by the then owner which refers to a lean-to having been erected in the farmyard 'in about 1968', this statement was made some time after the date of provisional registration, the wording used is uncertain, and both the farmyard and the lean-to are identified by reference to a plan which is not currently available. As a result, while this document provides some support for the extension having been carried out before the date of provisional registration, it is not, in my view, sufficient to show that there was a building on the application land at that time. As such, I afford it only limited weight.
10. Turning then to the question of whether or not the land fell within the curtilage of a building on that date, the word 'curtilage' is not defined in the 2006 Act but has been considered by the courts in various contexts, a number of which have been drawn to my attention by the applicant. From these cases, it appears that the question of whether land is within the curtilage of a building is a question of fact and degree. Key factors to be taken into account are the physical layout of the land and buildings, its ownership (past and present), its function and the relationship between the main building and the land in question. Furthermore, recent case law makes clear that the land should be 'part and parcel' of the main building.
11. The applicant essentially argues that at the time of provisional registration the land formed part of the farmyard of Town Farm and fell either within the curtilage

of the farmhouse or, in the alternative, of the main barn and/or its associated buildings.

12. I do not agree. Town Farm farmhouse is located to the south west of the application land with its principle elevation facing south. Its depiction on OS maps changes little from the 1906 edition to that shown on the 1974 OS map base. It is shown with its own access, separate to that of the application land, its own small garden and associated outbuildings. These areas form a well-defined and distinct curtilage to the farmhouse essentially comprising the land and buildings that were functionally linked to, and part and parcel of, the main dwelling.
13. Further context can be seen in the aerial photographs which, while undated, shed further light on the relationship between the application site and the farmhouse. While it may be the case that both the farmhouse and the application land were used in conjunction with the wider farm holding, the physical separation and layout of the area does not indicate that there was a functional relationship between the farmhouse and the application land or that the application land was part and parcel of the farmhouse.
14. Similarly, Churchlea Barn, located to the north of the farmhouse, is a feature that existed prior to 1970, albeit as an agricultural barn and not a residential dwelling. It is shown on the pre-1970 OS maps with an open area to the rear and a boundary feature separating it from the application land. The 1974 OS map, as well as the undated aerial photography, show two other large agricultural buildings had been erected to the rear of the barn, one of which is running in a vertical alignment along the westernmost boundary of the application site.
15. I have made clear above that I do not consider there is sufficient evidence to show that this building extended into the application land at the time of provisional registration. However, even if I were to accept that all three buildings were present in their early form at that time, the pre-1974 OS maps show a clear boundary feature separating the application site from the buildings. This accords with the aerial photograph provided by the Parish Council which also shows a boundary feature separating these two areas with the main barn and the other two buildings forming a well-defined and separate unit.
16. While some support for the application land having been used in conjunction with these buildings can again be found in the sworn statements made in 1978, for similar reasons to those already set out above, these statements are incomplete, and their evidential weight is limited. Overall, there is little robust evidence which would indicate that the application land was functionally or physically linked to the main barn or the other buildings on the date of provisional registration or that it formed part and parcel of any (or all) of those buildings at that time.
17. Accordingly, I do not consider there is sufficient evidence to show that the application land was covered by a building or was within the curtilage of a building on the date of provisional registration. Consequently, criteria (b) is not met.

Other Matters

18. In reaching my decision, I have had regard to the other matters raised by the applicant including the history of site ownership, function and use. However, these matters do not affect my reasoning or the conclusions I have reached above.

Conclusion

19. Paragraph 8 of Schedule 2 to the 2006 Act applies a number of criteria which, if met, justify the removal of land from the register. These are set out in paragraph 3 above. As I have made clear, in the present case, while I consider criteria (a) and (c) are met, I do not consider the factual circumstances necessary to meet criteria (b) have been demonstrated, namely that the land was covered by a building or was within the curtilage of a building on the date of provisional registration. As such, the application fails and I do not consider it necessary to go on to assess whether criterion (d) is met.
20. Consequently, having had regard to these and all other matters raised in the written representations, I conclude that the application should be refused.

Rory Cridland

INSPECTOR