



Application Decision

Inquiry held on 23 January 2013

By Helen Slade MA. FIPROW

An Inspector appointed by the Secretary of State for Environment Food and Rural Affairs.

Decision date: 6 February 2013

Application Ref: COM 384

Name and location of common: Carn Galver, Zennor, Cornwall

Register Unit: CL645

Registration Authority: Cornwall Council

- The application, dated 5 December 2011, is made under Paragraph 4 of Schedule 2 to the Commons Act 2006 ('the 2006 Act').
- The application is made by Mr Ian McNeil Cooke on behalf of Save Penwith Moors.
- The application is to register waste land of a manor not registered as common land in the register of common land.

Summary of Decision: The application is granted.

Preliminary Matters

1. I made an unaccompanied visit to the application site on Tuesday 22 January 2013 in the late afternoon when I was able to view the site from a central vantage point. At the inquiry, held the following day, I established that no-one wanted to accompany me on a further site visit, and I did not consider it necessary to make any further inspections of the land in question.
2. The applicant and some of the supporters of the application attended the inquiry and several of them spoke. None of the objectors appeared at the inquiry to speak in opposition to the application. Three people spoke as interested parties.
3. A query was raised at the inquiry regarding the arrangements for viewing the documents relating to the application which were on public deposit. Mr Wright of Cornwall Council confirmed that the documents had been available at Truro Council offices, as set out in the statutory notice, and also at St Ives 'one-stop shop'. I am satisfied that the statutory requirements have been met in this respect.

The Application Land

4. The area of land which is the subject of the application extends to 70.118 hectares of land lying to the south of the road B3306 to the west of Zennor. The western and south-western boundary is marked by boundary stones marking the boundary between the parishes of Zennor to the east and Morvah to the west. The southern extremity is marked by a discontinuous low stone wall and the eastern boundary is undefined on the ground, although shown on the Ordnance Survey maps with a solid line. The whole of the application land

can be viewed from the summit of the rocky outcrop Carn Galver which rises to almost 250 metres.

5. The land is owned by the National Trust, which supports the application; in the light of which Cornwall Council confirmed at the inquiry that they were also supporting the application.

The Statutory Requirements

6. Paragraph 4(6) of Schedule 2 to the 2006 Act provides that any person may apply to the Commons Registration Authority ('CRA') to add land to the register of common land. The Commons Registration (England) Regulations 2008 ('the 2008 Regulations') set out the procedures to be followed.
7. The application was made on 6 December 2011¹ and has been made in accordance with the provisions of Paragraph 4 (5) of Schedule 2 to the 2006 Act, which provides that land may be added to the register of common land where the land is waste land of the manor and where:
 - a) The land was provisionally registered as common land under section 4 of the Commons Registration 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).
8. The circumstances set out in sub-paragraph (5) are 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).
9. An application must be made in accordance with the 2008 Regulations. Paragraph 16 of the 2008 Regulations requires that an application must –
 - a) be made in writing on a form provided by the registration authority to which the application is made; and
 - b) be signed by, or by a representative of, every applicant who is an individual, and by the secretary or some other duly authorised officer of every applicant which is a body corporate or an unincorporated association.
10. In addition, paragraph 14 of Schedule 4 to the 2008 Regulations requires that an application made under Paragraph 4 of Schedule 2 to the 2006 Act must include –
 - a) a description of the land to which the application relates; and
 - b) evidence of the circumstances set out in paragraph 4(2) of Schedule 2 to the 2006 Act.
11. 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.

¹ For the purposes of remedying or rectifying mistaken non-registration under the Commons Registration Act 1965 the application must be made on or before 31 December 2020.

Reasons

The current application

12. The application has been made and advertised in accordance with the regulations. Three objections were made within the specified time and 21 parties made representations in support of the application. I am satisfied that the application is duly made.

Whether the land was provisionally registered under the 1965 Act

13. The application land was originally the subject of an application made by Peter Aubrey Seymoor Pool on 17 December 1969, in accordance with the provisions of the 1965 Act. The application, no. 1851, was provisionally registered on 16 February 1970. A second application, no. 1891, was made by the West Cornwall Footpaths Preservation Society on 22 December 1969 and the register was amended to record this on 31 March 1970. No-one has disputed these facts.

Whether there were any objections to that registration

14. An objection to the provisional registration was made by the agent of the landowner at the time, Mrs Andrews, stating that the land concerned was, and always had been, part of Bosigran Farm. It was claimed that the land was owned without restriction and was not common land. The objection (no. X1134) was made on 12 July 1972 and is formally recorded in the Commons Register. No-one has contested this fact.

The circumstances of the cancellation of the provisional registration

15. On the 27 November 1974 the Commons Register was amended to record the cancellation of the provisional registration of all the land involved. Two applications were made to remove the land: one from Mr Pool himself (dated 14 July 1973) and one from the West Cornwall Footpaths Preservation Society (dated 7 December 1972). I have not seen these applications, but they are formally recorded in the Commons Register and that entry has not been disputed.
16. The application was cancelled before being referred to the Commons Commissioner in circumstances provided for by Paragraph 4(5) of Schedule 2 to the 2006 Act. I am therefore satisfied that this criterion has also been met.

Evidence that the application land is waste land of the manor

17. In order to justify the re-registration of Registration unit CL 645 it is necessary for the applicant to show that the application land is (or was) part of the waste land of a manor. Guidance on applications is contained in '*Guidance to applicants in the pioneer implementation area*' and in the associated '*Guidance to commons registration authorities and PINS for the pioneer implementation*', both produced by defra.²
18. Legal authority for the definition of 'waste land of the manor' suggests that it is 'the open, uncultivated and unoccupied lands parcel of the manor, other than

² Latest editions dated September 2011

demesne lands of the manor'.³ Land is 'of the manor' if it can be shown to be land which is, or was, formerly connected to the manor concerned.⁴ 'Demesne land' is land within a manor which is owned and occupied by the lord of the manor for his own purposes.

19. It is defra's view that land does not cease to be 'unoccupied' merely because it is subject to a tenancy, lease or licence whose sole or principle purpose is to enable the land to be extensively grazed. Upland grazing land of manorial origin will not have ceased to be waste land simply because there is provision for grazing contained in several tenancy agreements. For land to be termed 'occupied' it is considered that there must be some exclusivity of physical use (e.g. by a tenant or owner alone).
20. The vast majority of land in England will inevitably be former land of a manor, owing to the historic system of land management in this country. However, the applicant must show that the land which is the subject of this application is, on the balance of probabilities, land lying in an area which is recognised to have been (and may still be) manorial land, and that there is no convincing evidence to the contrary.
21. Mr Coles, who has researched this application for Save Penwith Moors, provided evidence of various historical documents to support the contention that Carn Galver formed part of the former manor of Hornwell, which lay within the parish of Zennor. Assisted by the evidence of Mr Weatherhill, an historian, and by reference to these documents, it was shown that the manor of Hornwell was a scattered manor, not geographically contained in one area. Mr Coles explained that the manorial system was a social system and not geographically based. It was fundamental to the local system of administration and based on ownership of land and property.
22. The earliest document to which Mr Coles referred was an indenture dating from 1759 which involved the sale of several manors and referred to the manor of *Horrell* (an early form of Hornwell) in the parish of '*Sennor*' (likewise an early rendering of Zennor). Rent books from 1763 to 1769 also refer to the rents from the manor of Hornwell and also include properties on either side of the application land.
23. The 1844 Tithe Map shows the application land as plot number 80 which is described in the apportionment as Bossigran (*sic*) Common with rights of turbarry⁵ attached. The apportionment shows that the land was occupied at that time by a Mr Eddy Richards, and was in the ownership of Borlase Samuel Esq, and Mrs Sophia Praed, the mother and guardian of William Backwell Praed Esq, a minor and Phillips Esq. Harry Hannibal Curnow Christopher William, . Lessees of Praed and Phillips parts.
24. Mr Weatherhill described the applicant for the provisional registration in 1969, Mr Peter Pool, as one of the foremost Cornish historians who did much work on the manorial systems of the county, and whose work is highly regarded as exemplary. His writings have never been disputed. As a noted scholar he wrote an article in the Journal of the Royal Institution of Cornwall (1959) about

³ *Attorney General v Hanmer* [1858]

⁴ *Hampshire County Council v Milburn* [1990]

⁵ The right to take peat or turves for fuel

the 'Penheleg manuscript' dating from about 1580. He refers in the article to the inclusion of Bosigran in the manor of Hornwell and describes the complicated relationship between the manors and tithings of the area.

25. I am satisfied, in the absence of any evidence to the contrary, that the variety of historical documents which make reference to the manor of Hornwell show that Bosigran was part of that manor, and that the application land, variously known as Bosigran Common or Carn Galver, formed part of the holding of Bosigran farm. It therefore lies within land which was formerly part of the manor of Hornwell.
26. There is no evidence to show that it has ever been cultivated, and its character is clearly open. It appears to be used for the purpose of extensive grazing, and is now subject to open access under the provisions of the Countryside and Rights of Way Act 2000. It is not 'occupied' in the sense described in the guidance, and there is no evidence to suggest it has ever been otherwise.
27. I am therefore satisfied, on the balance of probabilities, that the application land was waste land of the manor of Hornwell at the date of the application and qualifies for registration as common land.

Other Matters

28. The objections to the application submitted by Gerald Babcock, Zoe Polglase, and Betty Barrett all related to the question of management of the grazing on the common, and the 'improvement' of the land concerned. Mr Nankervis and Mr Trewern, who spoke at the inquiry, were also concerned about the implications of registration on the management of the land.
29. The management of the land is not a matter which affects my decision which must be based on the statutory criteria I have set out above. Mechanisms exist for the management of common land if necessary, and these are subject to different legislative regimes.
30. Mr Bob Milton, appearing in support of the application on behalf of the British Horse Society, was concerned to show that access for equestrians to the application land should be permitted following a successful registration. Whilst I acknowledge his legal submission in this respect, the question of access management to the common is not a matter which affects my determination of the application. I make no comment on his arguments.
31. Mr Holmes spoke as an interested party, querying why the adjoining land was not included in the application as it also seemed to fit the criteria.
32. I am only able to deal with the application before me. Mr Wright, of Cornwall Council, explained that the CRA were currently dealing with a number of other applications, one of which affected the land about which Mr Holmes was concerned. This will be advertised in due course.

Conclusions

33. Having regard to these and all other matters raised at the inquiry and in the written submissions, I conclude that, on the balance of probabilities, all the criteria for the registration of the application land have been satisfied.

Formal Decision

34. The application is granted and the land shaded yellow on the plan attached to the application dated 5 December 2011 shall be added to the register of common land.

Helen Slade
INSPECTOR

APPEARANCES

Applicant

Mr Ian McNeil Cooke Save Penwith Moors

In support of the applicant

Mr David Coles Save Penwith Moors

Mr Craig Weatherhill Historian

Mr Bob Milton British Horse Society

Interested parties

Mr Samuel Nankervis Local resident

Mr Eddy Holmes Local resident

Mr John Trewern Member of the public

Commons Registration Authority

Mr Tomas Hill Cornwall Council

Mr Martin Wright Cornwall Council

DOCUMENTS

1. Submission papers and attachments from Cornwall Council to the Planning Inspectorate dated 10 July 2012 which include the application and supporting evidence; the objections to the application; and all other requisite background papers
2. Statement of Mr Bob Milton