



Penderfyniad ar Gais

Ymweliad safle a wnaed ar 5/11/19

gan **Janine Townsley LLB(Hons)**
Cyfreithiwr (Nad yw'n ymarfer)

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 21/02/20

Application Decision

Site visit made on 5/11/19

by **Janine Townsley LLB(Hons) Solicitor**
(Non-practising)

an Inspector appointed by the Welsh Ministers

Date: 21/02/20

Application Ref: COM/3226442

Site address: Land at Stradland Farm, Ambleston, Haverfordwest SA62 5DR

The Welsh Ministers have transferred the authority to decide this application to me as the appointed Inspector.

- The application dated 9 November 2018 is made under paragraph 7 of Schedule 2 of the Commons Act 2006 (the 2006 Act) for consent to correct non-registration or mistaken registration.
 - The application relates to Stradland Farm, Ambleston, Haverfordwest, Pembrokeshire and the Commons Registration Authority is Pembrokeshire County Council.
 - The application is made by Mr Gareth and Mrs Caroline Owen.
 - The proposal is to deregister land wrongly registered as common land.
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Decision

1. The application is granted and the land, which forms part of CL36, shown hatched blue on the plan appended to this decision shall be removed from the Register.

Procedural and Preliminary Matters

2. Regulation 15 of the Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017 (the Regulations) requires the relevant registration authority to refer any application made in accordance with these Regulations to the appointed person in certain circumstances. These are where the registration authority has an interest in the outcome of the application or proposal such that there is unlikely to be confidence in the authority's ability to determine it impartially, or where a person having a legal interest in the land has made representations amounting to an objection and the application has been made under any of paragraphs 2 to 9 of Schedule 2 of the 2006 Act.
 3. Pembrokeshire County Council ("the Council") is the relevant registration authority. Ambleston Common has been placed under the protection of the Council and Ambleston Community Council in accordance with section 9 of the Commons Registration Act 1965 and as such the Council considers that it has a legal interest in the land in accordance with paragraph 15(3) of the 2017 Regulations. As a result of this, in accordance with the Regulations, the application has been referred to me as the appointed person to determine the application on behalf of the Welsh Ministers.
 4. The application land is owned by the applicants. The land is located to the rear of the residential property known as Stradland Farm and is accessed via that dwelling. The applicants purchased the land and dwelling in 2016.
 5. Ambleston Common (CL/036) was registered as a common on 6 June 1968 and amounts to 70.609 acres, comprising fields numbered 307,310, 333 and 346. It was
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registered pursuant to an application made on 1st December 1967 by the Clerk to Ambleston Parish Council.

6. The application land comprises fields 307 and 310 amounting to 5.09 acres. These fields are separated from the remainder of the common by a stream. From my observations, there is no bridge or other means of crossing the stream from the application land to the remainder of the common.

The Application

7. The current application has been made under Schedule 2, Paragraph 7 of the Commons Act 2006 for the de-registration of two fields, 307 and 310 on the Commons Register. The applicants claim on their application form that it should be de-registered because the land has been incorrectly registered as part of Ambleston Common (CL36).

Summary of Representations

8. One objection has been received to the application from the Open Spaces Society (OSS). Whilst the OSS accepts that the evidence shows the land was not registered as common land in the first half of the nineteenth century, it is stated that the land may have been part of the common prior to this time. It is also stated that although there is evidence related to conveyances of the land that it was considered to be part of Stradland Farm, this does not exclude the possibility that prescriptive rights existed at that point. Furthermore, representations have been received that rights have been registered over the land and that these rights had been registered immediately prior to the provisional registration of the land.

Main Issues

9. 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;
 - (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.

¹ The Commons Registration Act 1965

10. 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 applicants to adduce sufficient evidence to merit granting the application. The burden of proof is the normal civil standard, namely, the balance of probabilities.
11. The main issue is whether the applicants have adduced sufficient evidence to show that the application land was registered as common land in error.
12. There is no evidence to suggest that the requirements set out in paragraphs 2 (a), (b) and (c) have been met. Although the question of the ownership of the application land was considered by a Commons Commissioner under the provisions of section 8 of the 1965 Act this does not preclude consideration of the application. I am satisfied that these requirements have been met and I have not considered them further. The land was provisionally registered on 6 June 1968.

Reasons

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

Land subject to rights of common

13. There are registered rights of common over the application land but these were not registered immediately before the provisional registration. Copies of applications for the registration of rights of common have been produced but these post-date the provisional registration of the land. Although the OSS states that there were rights of common which had been registered before the provisional registration of the land, this position is not supported by the evidence. The OSS refers to evidence submitted in support of the applications to register rights which were made after provisional register of the land as assets pre-existing rights. This matter is dealt with in further detail below.
14. The OSS objection states that prescriptive rights of common may have existed, however, there is no evidence that any prescriptive rights have ever been claimed. In particular, reference has been made by the applicants to the valuation carried out pursuant to the Finance Act 1910 for which no deduction for rights of common were made in relation to the application land. Furthermore, reference has been made to a series of conveyances from 1856 without reference to incumbrances such as would be expected if rights of common had been exercised over the application land. Whilst I note the OSS states that the burden rests on the applicant to demonstrate that no such rights existed, I consider it would be unreasonable to expect that a party produces evidence to counter a claim which has not been indicated.
15. Furthermore, I note the applicants state that if any individuals believed prescriptive rights existed over the application land, the evidence demonstrates that no such rights have been exercised since registration. This reinforces their position that there is no evidence of the acquisition of prescriptive rights over the application land.
16. Overall, I am satisfied that immediately before provisional registration, the land was not subject to rights of common.

Waste land of the Manor

17. Waste land of the manor is open, uncultivated and unoccupied land of the manor other than the demesne lands of the manor.

18. The land forms part of the freehold of Stradland Farm. The applicants state that it was purchased by them with the intention it be occupied.
19. The records produced by the applicants relating to Tithe, Finance Act and the conveyances referred to above support the occupation of the land and show that it was sold over successive years as forming part of the land surrounding the dwelling.
20. The applicants have stated that no definitive evidence is available of the geographical extent of Ambleston Manor and the manorial lands and in any event, should the application land have fallen within the manorial lands, the evidence of occupation would suggest the land was occupied and cultivated and not waste. I note from the evidence that no objection to the application has been made by any person with a legal interest in the common as a whole and evidence from those with rights of common confirm their understanding that the application land does not form part of the wider common.
21. 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

22. 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 years.²

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

23. The applicants assert that the land has never been used for lawful sports and pastimes. The applicants have investigated whether an Inclosure Award has been made but no evidence of any has been found and the Council has confirmed that they hold no evidence of Inclosures in the area.
24. Overall, there is no evidence to suggest that the application land has been used by the inhabitants of the locality for recreation, or that a customary right to engage in lawful sports or pastimes was exercised. Indeed, evidence of conveyances dating back to 1856 indicate the land has been occupied beneficially. This factor and the physical separation of the remainder of the common by the stream would have caused an impediment to any access to the land by the inhabitants of the locality.
25. On the basis of the above, I am satisfied that the land did not form a town or village green immediately before registration.

Conclusion

26. 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.
27. 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

² Section 22 of the 1965 Act.

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 pasture³. Although the applicants have not adduced copies of any Inclosure records, from the evidence provided, 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.

28. In reaching the above conclusion, I have considered where relevant the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 (WBFG Act). I have taken into account the ways of working set out at section 5 of the WBFG Act and consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives, as required by section 8 of the WBFG Act.
29. Having regard to these and all matters raised, I conclude the application should be granted.

Janine Townsley

INSPECTOR

³ Land owned in common by several persons who also use the land in common at certain or all times of the year.

