

IN THE MATTER OF A PUBLIC INQUIRY**Application Number: 2994****PART 3 OF THE COMMONS REGISTRATION (ENGLAND) REGULATIONS 2014****APPLICATION MADE UNDER SCHEDULE 2 OF THE COMMONS ACT 2006**

FIRST NOTE OF INSPECTOR: 28 September 2023

Introduction

1. On 08 January 2020, the Cornwall Council received an application by Arthur and Mary Alway (“the Applicants”) to remove land from the register of common land (“the Application”). The Application was made under Paragraph 7 of Schedule 2 to the Commons Act 2006 and asserts that the relevant land was wrongly registered as common land.
2. I have been instructed to act as an inspector to hold a public inquiry in relation to the Application and to prepare a report and recommendation to the Cornwall Council.

Preliminary matters

3. The Cornwall Council will be providing notice of my appointment to the Applicants and those who made representations in respect of the Application. I have seen and approved the contents of the notice which contains important information about procedural matters. I encourage any person wishing to take part in the public inquiry to read the notice carefully.
4. I ask that any correspondence addressed to me is sent to the Cornwall Council using the contact details provided in the Council’s notice. This will help to ensure that there is a record of communications and one point of contact. Any communications from me will

be sent through the Cornwall Council. Please note that I do not intend to provide individual responses to communications.

5. After holding the inquiry, I will be preparing a report to the Council which will summarise the evidence and representations received where appropriate. If any person wishes any information sent by them to be treated as confidential, then they should make this very clear in their covering correspondence. In such circumstances, I may advise that person that the information cannot be taken into account unless it is made public.
6. The Council is instructing me and I will liaise with the Council about the progress of the inquiry and arrangements for it. I have made it very clear to the Council that I will be undertaking my role independently and objectively. This means that any view expressed by the Council and/or any potential impact on the Council as a result of any recommendation, financial or otherwise, will not impact on my recommendation about the Application, save as to the extent that such matters are relevant material matters for me to consider within my report (in which case I will address them in the report).

Pre-inquiry meeting

7. I have asked that a pre-inquiry meeting is arranged to determine the matters to be addressed and the procedure to be followed at the inquiry. I have seen and approved the contents of the notice of the meeting including the agenda set out within it.
8. To help all those who have an interest in the Application prepare for the pre-inquiry meeting, I have decided to set out my initial and provisional views on the issues required to be determined at the public inquiry. I intend to invite anyone attending the pre-inquiry meeting to make representations on the following matters before setting out my decision as to which matters will be addressed at the inquiry.

The Land

9. The land to which the Application relates is referred to as “Land called Feadon Wood, Nance Wood and Portreath Moor, Portreath, Cornwall (“the Land”). The Register of Common Land indicates the following:
- (1) On 25 June 1968, the Camborne-Redruth Urban District Council made an application to provisionally register the Land as common land under Section 4 of the Commons Registration Act 1965.
 - (2) The Land was provisionally registered as Common Land on 08 October 1968 and afforded unit number CL333.
 - (3) The provisional registration is recorded on the register as becoming final on 09 October 1973 with a note that the provisional registration was undisputed.
10. I am told by Cornwall Council that the section of the Land subject to the Application comprises 14.572 hectares of mainly woodland.

The Application

11. The Application was date stamped as received by the Cornwall Council on 08 January 2020. The Application asserts that the Land was wrongly registered as common land under Paragraph 7 of Schedule 2 to the 2006 Act.

Paragraph 7

12. Paragraph 7 of Schedule 2 to the Commons Act 2006 states as follows:
- “Other land wrongly registered as common land*
- (1) *If a commons registration authority is satisfied that any land registered as common land is land to which this paragraph applies, the authority shall, subject to this paragraph, remove the land from its register of common land.*
 - (2) *This paragraph applies to land where—*

- (a) *the land was provisionally registered as common land under section 4 of the 1965 Act;*
 - (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 a 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 (c. 118).*
- (3) *A commons registration authority may only remove land under sub-paragraph (1) acting on—*
- (a) *the application of any person made before such date as regulations may specify; or*
 - (b) *a proposal made and published by the authority before such date as regulations may specify.*

13. Paragraph 7 therefore provides that a commons registration authority shall remove land from its register of common land if it is satisfied that the Land is land to which the matters in 7(2) apply.

The issues

14. There does not seem to be any issue about the matters listed in (a) (b) and (c) of paragraph 7(2). I have not seen any representations suggesting that these matters are not established. The register itself provides details of the provisional and final registration at a time when the Commons Registration Act 1965 would have applied. There is nothing to suggest that the provisional registration of the Land as common land was referred to a Commons Commissioner under section 5 of the 1965 Act. That section provides that a registration authority could refer the matter to a Commons Commissioner in the event of an objection having been made which is not withdrawn.

The second entry in the Register confirms that the first entry was “undisputed”. However, if any party disagrees with these conclusions then it would be helpful if they can make this clear at the pre-inquiry meeting, or in writing in advance if they are not able to attend the meeting.

15. Subject to the above, the issue for determination seems to be whether 7(d) is established.
16. The use of the words “not any of the following” and “or” in 7(d) make it clear that the land must not fall within any of the descriptions (i.e. (i) (ii) (iii) or (iv)) at the relevant time for the application to be successful. The relevant time is expressed to be “immediately before its provisional registration”. The register confirms that the date of the provisional registration is 08 October 1968.
17. For these reasons, my provisional view is that the issue to be addressed at the inquiry by way of evidence and representations from the parties is: whether or not the Land fell into one of the descriptions listed above immediately before 08 October 1968. However, I will invite any representations from any party who disagrees with my provisional view at the meeting.
18. I attach some well known legal definitions to this note to inform the parties of my likely approach to the descriptions in paragraph 7(d). Again, I will hear any representations anyone wishes to make about the meaning of those descriptions at the meeting.
19. My initial view is that the Applicants have the burden of proving that the relevant land was not in any of the descriptions in paragraph 7(d) immediately before 08 October 1968 on the balance of probabilities. However, I expect the objectors to provide evidence in support of the matters asserted by them. I will hear representations about the burden of proof at the meeting.

20. Participants should consider whether there are any other issues which they consider should be addressed at the inquiry and are invited to raise these at the pre-inquiry meeting, or in writing before the meeting in the event that they are not able or willing to attend the meeting.

Other matters

21. In respect of some of the other matters to be discussed at the meeting:
- (1) My initial view is that the inquiry should take place before the end of April 2024 (if possible) and at a location near the Land.
 - (2) Depending on the number of people intending to make representations at the inquiry, my initial view is that it should be listed for 4 days to start on a Tuesday with the Monday to be used for the site inspection.
 - (3) It would be helpful for those intending to make representations and/or to provide evidence to confirm any dates on which they will not be available to attend the inquiry between February 2024 and the end of April 2024. I will attempt to accommodate the availability of participants as much as possible but will prioritise the availability of those intending to give evidence.
 - (4) I will consider whether the Applicants and any other interested person should be invited to provide me with a list of any features on the Land they would like me specifically to consider during my site inspection.
 - (5) I intend to make a direction for the Applicants and any person wishing to give evidence to serve written statements on me and other relevant persons before the inquiry. I will hear representations as to who intends to give evidence, which persons (other than the Applicants) should be served with any statements, and the timescales for written statements to be provided.

Sancho Brett

28 September 2024