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Mr George Thompson
Commons Registration Officer
Herefordshire Council
Franklin House
4 Commercial Road
Hereford HR1 2BB

Your Ref:
Our Ref: COM 141
Date: 20 June 2012

Dear Mr Thomas,

**COMMONS ACT 2006: SCHEDULE 2, PARA 2
COMMONS REGISTRATION (ENGLAND) REGULATIONS 2008 ('the 2008 Regulations')
MONKLAND COMMON (CL139): CASE REFERENCE COM 141**

The decisions in respect of the above applications are enclosed.

Once an application has been determined, the Planning Inspectorate cannot comment further on the terms of the decision. There is no statutory provision for appeal against a decision but it can be challenged in the Courts within 3 months of the date of the decision letter. The procedure for this involves an application to the High Court for permission to apply for judicial review under the Supreme Court Rules.

Thank you for all your assistance during the application determination process.

Yours sincerely,

Willie Lengers
Common Land Casework Team



Application Decision

Site Visit and Oral Representation held on 21 December 2011

By Helen Slade MA FIPROW

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

Decision date: 20 June 2012

Application Ref: COM 141 Monkland Common

Register Unit: CL139

Registration Authority: Herefordshire Council

- The application, dated 10 June 2009 is made under Paragraph 2 of Schedule 2 to the Commons Act 2006 ('the 2006 Act').
- The application is made by Monkland and Stretford Parish Council ('the Parish Council').
- The application is to register as common land two parcels of land adjacent to Monkland Common, such land to be incorporated into CL139.

Summary of Decision: The application is refused.

Preliminary Matters

1. Herefordshire Council ('the Council') referred the application to The Planning Inspectorate ('PINS') on 19 November 2009. PINS was not satisfied that the requirements in respect of publication and notification of the proposal (set out in Regulations 20 to 26 of The Common Registration (England) Regulations 2008¹) had been met and the Council was requested to re-advertise the application in full.²
2. No objections were made to the application during either of the relevant periods of notice but the Parish Council expressed a wish to exercise their right to make an oral representation.
3. I held a site visit on Wednesday 21 December 2011 which was preceded by the presentation of an oral representation by Dr Jenny Barnes on behalf of the Parish Council. Also present were two other Parish Councillors: Mr Malcolm Weatherhead and Mr Richard Wheeler. In attendance as observers were Helen Beale and Kirsten Lloyd from the Council which is the Commons Registration Authority ('CRA').
4. Following the site visit, I invited the submission of further evidence to which reference had been made, but for which I had no documentation. The delay in issuing this determination is a consequence of my invitation, and to which I refer in paragraph 29 below.

¹ Hereinafter referred to as the 2008 regulations

² Notice dated 28 January 2011 advertised in the Hereford Journal on 9 February 2011

The Application Land

5. The application land consists of two parcels of land adjoining the registered part of Monkland Common and outlined in green on the application plan. One parcel lies to the north of the registered portion of Monkland Common and is separated from it by a stream. This area is described by the applicants as Area B. The second parcel lies on each side of the lane between the registered common and the village hall (referred to as Area A).

The Statutory Requirements

6. Paragraph 2 of Schedule 2 to the 2006 Act states that a CRA may register as common land any land which it is satisfied is land not registered as common land but which the relevant provisions indicate ought to be so registered. The 2008 Regulations set out the procedures to be followed.
7. A CRA may only register such land 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.
8. An application to correct the non-registration of land was made on 10 June 2009.³ The application has been made on the basis of the provisions of Paragraph 2(2) of Schedule 2 to the 2006 Act which provides that land may be registered which:
 - a) was not at any time finally registered as common land or as a town or village green under the 1965 Act;⁴
 - b) is land which is—
 - i. regulated by an Act made under the Commons Act 1876 (c. 56) confirming a provisional order of the Inclosure Commissioners;
 - ii. subject to a scheme under Metropolitan Commons Act 1866 (c. 122) or the Commons Act 1899 (c. 30);
 - iii. regulated as common land under a local or personal Act; or
 - iv. otherwise recognised or designated as common land by or under an enactment;
 - c) is land to which this Part applies; and
 - d) satisfies such other conditions as regulations may specify.
9. 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.

³ For the purpose of remedying non-registration under the 1965 Act, the application must have been made on or before 31 December 2020.

⁴ The Commons Registration Act 1965

Reasons

The Application

10. The applicant considers that the application land forms part of the common but was omitted from registration under the provisions of the 1965 Act. The omitted land has been managed and cared for by, or on behalf of, the Parish Council since at least 1993 and should be registered as part of the Registration Unit CL139.
11. No objection has been made to the application, and I am satisfied that the application has been made and advertised in accordance with the 2008 Regulations.

The evidence

Whether the land has ever been finally registered as common land

12. There is no dispute that the application land was not at any time finally registered as common land. The copy of the application made by Mr C Tebby in 1968, under the 1965 Act provisions, shows the area of common land to be registered outlined in red. The red line does not include either of the two areas now subject to this application.
13. The Commons Register describes the registered land thus:

"The area of land known as Monkland Common, extending to 11 acres or thereabouts, in the Parish of Monkland, Herefordshire, numbered Part 75 on the Ordnance Survey Map (2nd Edition 1904) to scale of 1/2500 of that parish, as marked with a green verge line inside the boundary on sheet 148 of the register map..."

The Register Map shows the registered area shaded green and with a green boundary line. It does not include either Area A or Area B. The registration became final on 1 October 1970.
14. The Ordnance Survey ('OS') parcel number for Monkland Common is 75, and the acreage given on the OS base map is 12.181. The printed base map indicates that the parcel of land forming the application land at Area A was part of parcel 75 and was measured as part of the whole. Area B is shown with a separate parcel number (72) and a separate acreage (1.160).
15. The extent of the area of common on the 1968 application plan and the extent of the area of common shown on the Commons Register are in agreement. Since the Commons Register describes the area as 'part' of parcel 75 and gives the area as '11 acres or thereabouts' it would seem that it was never intended to register any more of the land than currently appears on the register. The acreage registered is less than the figure shown on the OS base map, in accordance with the description given as being only 'part' of parcel 75. There is no reference whatsoever to the inclusion of Parcel 72, either in the application by Mr Tebby, or in the Commons Register.

Whether the application land is regulated by an Act made under the Commons Act 1876 (c. 56) confirming a provisional order of the Inclosure Commissioners

16. No documentation relating to Inclosure has been provided to me and no evidence of any regulation of the land, in connection with the Commons Act 1876, has been submitted.

Whether the application land is subject to a scheme under Metropolitan Commons Act 1866 (c. 122) or the Commons Act 1899 (c. 30)

17. No evidence of any scheme of management has been submitted. The Parish Council has adduced in evidence copies of a notice in a newspaper, dated 8 March 1993, in which they advertised their appropriation of Area B, and undertook to take care of it in the interests of local inhabitants. However, this does not amount to a scheme under the Metropolitan Commons Act 1866, which could not have applied in this case – Monkland Common not being a Metropolitan Common.

Whether the application land is regulated as common land under a local or personal Act

18. No evidence of the existence of a local or personal Act has been submitted. The Commons Register records that on 10 May 1977 a Commons Commissioner held a Hearing at Hereford into the question of the ownership of the registered unit. Not being satisfied that there was an owner, it was determined that the land would therefore remain subject to protection under Section 9 of the 1965 Act.
19. Section 9 of the 1965 Act provided that where the registration of any land as common land became final but no person was registered as the owner of the land, any local authority in whose area the land was situated could take such steps for the protection of the land against unlawful interference as if they were an owner, and could also institute proceedings for any offence committed in respect of the land.
20. The protection offered by Section 9 of the 1965 Act only applies to the area of registered common (CL139). The documentation submitted by the applicant shows that both the Parish Council and Hereford Council have, over the years, looked after the area of registered common. It may be that the Parish Council has taken responsibility for Area B, and indeed may have contributed to the cost of maintaining Area A, as other correspondence indicates, but the application land does not benefit from the protection afforded by the 1965 Act.
21. I accept that the application land may be being managed as part of the common land. I also accept that there is evidence to suggest that the application land has been grazed by stock belonging to Mr Raymond Bottom. The Commons Register provides the details of those properties with rights over the common. The Rights Section shows that various rights are exercisable in relation to the properties at Wall End Farm, Monkland; Upper Wall End Farm, Monkland; and Willow Cottage (or The Willows). At the time of the registration, these rights were held in the names of Major Piers Bengough, of Hamphsire (in respect of Wall End Farm and Upper Wall End Farm) and Mr Albin Adams.

22. It is not clear to me on what basis Mr Bottom claims his right to graze ducks and sheep on the common as he states that he and his family have owned 2 Shoredale Cottages for a period in excess of 100 years. No rights are recorded in relation to that property.
23. There is no evidence to support that the application land is regulated as common land under any legislation, regardless of how it is actually managed in practice.

Whether the application land is otherwise recognised or designated as common land by or under an enactment

24. The applicant has submitted a plan which is described in the application as being 'the official map of the year 1886'. The plan is annotated with a purple line outlining an area identified by the applicant as being whole of Monkland Common. The map shows the following printed text in the margin:

"STRETFORD P^H

*Zincographed and Published at the Ordnance Survey Office, Southampton.
1886"*

25. There is no key to the map, nor any other information about its provenance. However, from experience I can say that it is likely to be a copy of the first edition County Series OS map. It contains the same field numbers as those shown on the 1904 edition (on which the Commons Register plan is drawn) and also has the same acreage figures. The vegetation symbols show that the area which has been outlined in purple is all of the same type, and would probably have been described in the key (if it was available) as rough pasture.
26. As with the 1904 OS map, Area A appears to be contiguous with the main part of Monkland Common, but Area B carries a separate parcel number and acreage figure. The map is not an 'official' map of the common, but merely an earlier edition of the OS map and carries no weight in connection with the designation of common land.
27. When originally submitting the application to PINS, the Council included a copy of a map described as a copy of the Tithe Plan. No other documentation has been submitted in connection with the Tithe Award, which makes the interpretation of the plan rather difficult. The purpose of Tithe Awards was to commute tithes to a monetary value and to identify the amount of tithe appropriate to each parcel of land. It was not a function of the process to designate common land. The plan appears to show the area now registered as Monkland Common (CL139) together with Areas A and B as part of the same numbered parcel - 98. However, in the absence of any other documentation, the significance of this cannot be deduced.
28. Whilst I acknowledge that the preparation of a Tithe Award was done in response to legislation, the resulting Awards are not, in themselves, enactments. Consequently the Tithe Map cannot be given any weight as evidence of the designation of the application land as common land under any enactment.
29. Although reference was made during the oral submission to an Inclosure Act and Award, and despite allowing time for any such documentation to be found

and forwarded to me for consideration, no other evidence has been submitted to show that the application land has been recognised or designated as common land under any enactment.

Conclusions

30. From the information available to me it is not possible to show that the application land was omitted from the Commons Register as part of Registration Unit CL139 in error. There is insufficient evidence to show that it has been recognised or designated as a common under any other provisions and I therefore conclude that it should not be registered as common land as part of Registration Unit CL139.

Formal Decision

31. The application is refused.

Helen Slade
INSPECTOR

ORAL REPRESENTATION

Dr Jenny Barnes

Chair, Monkland and Stretford Parish Council