

Claire Lewis (CSP - Countryside Services)

From: Hugh Craddock [REDACTED]
Sent: 27 June 2018 10:57
To: Claire Lewis (CSP - Countryside Services)
Subject: RE: Application No. 001CR received under the Commons Act 2006, Unit No. MCL76
 'Y'

Hi Claire

Thank you for sight of the letter on behalf of the applicant. However, I don't think it quite addresses the point.

The Welsh Government's guidance, [Common land and greens: guidance on making corrections](#), is wholly inadequate in explaining the requirements of an application under para.7, but at page 5 (in the context of applications under para.4) it does state that—

'Waste land of a manor is land that fulfils all of the following:

- the land was at any point, or still is, part of a manor;
- the land is open, uncultivated and unoccupied...'

(the remaining text is relevant only to a para.4 application).

Let's assume that the land is manorial in origin (the applicant is welcome to demonstrate that it is not). Was the land 'open, uncultivated and unoccupied at the date of provisional registration? If the applicant can show it was not — that at least one of these three elements was not satisfied — that will meet one of the key criteria for a para.7 application. Were there walls enclosing the land, intended to keep stock on the land — if so, then the land was not 'open'? Was the land occupied in the sense of being used for some productive activity apart from extensive unimproved grazing? Very probably, as we have seen the conveyances, but the conveyances do not prove occupation in themselves, and some contemporary evidence of use and maintenance of the land by the farmer (rather than commoners) for grazing would be helpful.

I can see that we are in a position where it is tempting to draw inferences from the evidence that we have already seen, that the application land was, at the date of provisional registration, ordinary inbye land (is that 'ffridd' in Wales?), farmed as such land is and was usually farmed, and that it therefore cannot have been waste land of a manor. But the fact remains that the land was registered as common land, and the burden rests on the applicant to prove that the criteria are met, and it cannot be enough to rely on a circular assumption that a mistake was made in the original registration.

regards

Hugh

*Hugh Craddock
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The Open Spaces Society has staff with exhaustive experience in handling matters related to our charitable purposes. While every endeavour has been made to give our considered opinion, the law in these matters is complex and subject to differing interpretations. Such opinion is offered to help members, but does not constitute formal legal advice.

From: Claire Lewis (CSP - Countryside Services) [mailto:claire.lewis@powys.gov.uk]
Sent: 26 June 2018 17:09
To: Hugh Craddock
Subject: RE: Application No. 001CR received under the Commons Act 2006, Unit No. MCL76 'Y'

Dear Hugh

For your information I am attaching a redacted copy of a letter and epitome of title received from the applicant in response to your comments (as contained in your email of 09.52 dated 16th April) relating to the status of the application land as not being waste land of the manor.

This matter is now set to be determined in August.

Kind Regards

Claire Lewis
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