

**Application Decision**

Hearing held on 10 August 2023

**by Claire Tregembo BA (Hons) MIPROW**

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

**Decision date:** 7 September 2023

# Application Ref: COM/3313966 St. Breward

Register Unit: CL195 (Original provisional registration number)

Registration Authority: Cornwall Council

* The application, dated 31 December 2020, is made under Schedule 2 paragraph 4 of the Commons Act 2006.
* The application is made by the Open Spaces Society.
* The application is to register waste land of a manor as common land in the register of common land.

# Decision

1. The application is approved, and the land shown coloured blue on the plan appended to this decision shall be added to the commons register. The land hatched black shall not be added.

**Preliminary matters**

1. I held a hearing at Chy Trevail on 10 August 2023. I carried out an unaccompanied site visit on 1 August 2023.
2. The common is claimed to be within the Manor of Hamatethy. Various spellings of Hamatethy were used in the documents before me. I shall use the spelling from Council documents and the book ‘A History of St. Breward’ unless directly quoting from historic documents.
3. The ownership of the application land was recorded within two separate Land Registry Titles. The owners of Glebe Farm objected to the application. The other landowner, the current Lord of the Manor, did not object and wanted the land to be common. It is not before me to determine the ownership of the land and both parties were happy to raise this matter with Land Registry. The landowners are referred to in my decision as the owners of Glebe Farm and the Lord of the Manor.

# The Application Land

1. The application land is known as St. Breward Common and consists of a parcel of land between two registered parcels of common opposite Palmers Farm, St. Breward. It includes the road, the roadside verge on the southeast side of the road and land to the northwest side of the road. The application land and the registered common on either side were all part of the same application in 1967.

# Main Issues

1. The main issue is whether the land was waste land of a manor, at the date of the application on 31 December 2020, and whether before 1 October 2008:
	1. the land was provisionally registered as common land under section 4 of the Commons Act 1965 (the 1965 Act);
	2. an objection was made in relation to the provisional registration; and
	3. the provisional registration was cancelled in the circumstances specified in sub-paragraphs (3), (4) or (5) of the Commons Act 2006 (the 2006 Act).
2. Sub-paragraph (5), on which the applicant relies, requires the person who made the application for the provisional registration to request or agree to its cancellation (whether before or after its referral to a Commons Commissioner).

# Reasons

## The requirements of paragraph 4 of Schedule 2

1. The application land was provisionally registered as common land unit CL195 on 14 March 1968 following an application from Cornwall Commoners’ Association dated 27 October 1967.
2. An objection was raised to the provisional registration of this parcel of CL195, on 24 September 1970 by Arnold Blackburn (objection reference X388). Other objections for parcel CL195 were also received in September 1970.
3. The objections to CL195 were considered at a hearing on 11 July 1979. Representatives of the objectors and applicants including Cornwall Commoners’ Association were present. The application land was within Entry No. 1 in the Register of Common Land which consisted of three parcels of land. The Commons Commissioners’ decision states ‘the parties present or represented all accepted these objections, and accordingly I shall refuse to confirm the registration at Entry No. 1 so far as it comprises the three parts to which the objections relate.’ This shows the applicant agreed to the cancellation of the application land.
4. Some parties suggested that because objection X388 was not specifically referred to in paragraph 3 of the Commissioner's decision it was not cancelled. The objections referred to concerned matters relating to the ownership of the other two parcels of land which the Commissioner needed to address specifically. The Commissioner clearly referred to all three parcels of land within Entry No. 1 when he refused to confirm the registration.
5. This fulfils the criteria set out in paragraph 4 of Schedule 2 of the 2006 Act.

## Whether the land is waste land of a manor

1. It is seldom possible to prove definitively that a particular parcel of land is waste land of a manor. But it should be sufficient to show that, on the balance of probabilities, the land lies in an area which is recognised to have been, or still be, manorial, and that there is no convincing evidence to the contrary.
2. The definition of waste land of a manor arising from the case of Attorney General v Hanmer [1858] (2 LJ Ch 837) is “*the open, uncultivated and unoccupied lands parcel of the manor other than the demesne lands of the manor*”. Demesne land is land within a manor owned and occupied by the lord of the manor for his own purposes.
3. The application land is shown on the Tithe map as part of parcel 512 ‘part of Church Hay Down’ and described as coarse pasture. Parcels 1741 and 1742 are also part of Church Hay Down and are listed under the heading ‘Moors and Wastrels Belonging to the Manor of Hametethy’. A rent roll dating between 1634 and 1651 lists the tenants and farms of the Manor of Hamatethy. It includes ‘Anthony Nicholls, Esq. for Pallmers’. Palmers Farm is shown on the Tithe map south of the application land and is still called Palmers Farm. These documents show that the land on three sides of the application land is within the Manor of Hamatethy.
4. However, parcel 512 was held and occupied by the Reverend Thomas Jones Landon and was Glebe land. The 1613 Glebe Terrier for the parish of St. Breward shows the vicarage held a parcel of land in the moor commonly called the Vicars Common Moor where only the vicar cuts turfs or fuel. The 1680 Glebe Terrier refers to this land as Heathy Common which is so called because every man in the manor pastures it. The applicant suggests this indicates part of the waste of the manor was given to the glebe for cutting turf but was still used for common grazing and retained the character of waste.
5. The owners of Glebe Farm questioned this and suggested the church could have existed before the manor. If this were the case, the application land would not have been of Manorial origin. However, ‘Chapter 3: The Parish Church in the book A History of St. Breward: The Life of a Moorland Village’, states the church was built in the twelfth century and endowed by the Lord of the manor of Hamatethy to the priory of St. Andrew, Tywardreth details of which were provided in the document ‘Carta Willielmi Peverel de ecclesia S. Brewardi’ circa 1190. This suggests the manor existed before the church and the Lord of the Manor gifted waste of the manor to the church.
6. The applicant also considered the Land Registry Title showing the application land in the ownership of the current Lord of the Manor indicates it is of the manor.
7. Having regard to the above, I consider the evidence sufficient, on the balance of probabilities, to show the application land is of the Manor of Hamatethy.

## Whether the land fulfils the character of waste land of the manor

1. The question as to whether land is waste land of the manor is one which must be satisfied at the date of the application on 31 December 2020. Having regard to the definition of waste land of the manor in paragraph 14, I must now consider the character of the application land.

*Open*

1. Generally, ‘open’ in this context means unenclosed. At the time of my site visit, the land was open on both sides of the road running through it. There were dry stone walls or hedges to the north, west and southeast boundaries of the application land but they appeared to be for the purpose of enclosing the adjacent land rather than the application land. There were no boundaries between the application land and the registered common land to the northeast. Photographs provided with the application indicate this was also the case at the date of the application.
2. Overall, it is my view that the application land was ‘open’ at the date of the application.

*Uncultivated*

1. At the time of my visit, the land was overgrown with natural vegetation such as ferns and brambles and the application photographs indicate it was in the same state at that time. There is no officially accepted definition of what constitutes cultivation for the purpose of the 2006 Act. Therefore, it is necessary to consider each case individually and assess the degree of cultivation that has taken place.
2. The applicant considered uncultivated land to be land where the soil remained unbroken, and no plants were planted. They referenced ‘Gadsden and Cousins 3rd Edition’, which considered self-sown trees or the odd planting of trees would not make the land cultivated. Neither would the mowing of natural vegetation.
3. The owners of Glebe Farm considered the breaking of soil only applied to arable cultivation. They considered cultivated land to include land used for the production of food. They use the application land for grazing cattle and the production of honey. A contractor had mowed the land annually to encourage grass until approximately twenty years ago. They also referred to the planting of land back to its natural state for nature conservation purposes, although there was no indication that this had been done on the application land. I do not share these views.
4. As the land was overgrown with natural vegetation, I consider no cultivation of the land has occurred. Therefore, it is reasonable to describe the land as uncultivated for the purposes of the 2006 Act.

*Unoccupied*

1. In respect of occupation this requires the physical use of the land to the exclusion of others, rather than the ownership or lawful use of the land.
2. All parties agreed that the land is open access land under the Countryside and Rights of Way Act 2000 and is therefore available to the public.
3. Glebe Farm keep beehives and graze cattle on the land. Therefore, they considered it to be occupied by themselves and their bees and livestock. However, another party, who did not own the land, stated he and others had grazed their cattle on the application land.
4. I do not consider the land to be occupied and it is clear the land is available to the public and used by other parties for grazing livestock.
5. Taking into account the evidence as a whole, the application land can be described as open, uncultivated and unoccupied. Therefore, the application land fulfils the character of waste of the manor.

**Other Relevant Matters**

1. Cornwall Highways objected to the inclusion of the public highway, including the highway verge along the south-eastern edge of the application land. They considered land that formed part of a highway was not defined as common land under Section 22 of the 1965 Act. As the intention of the current application was to correct mistakes made when commons were registered under the 1965 Act it would not make sense for highway land to be registered under the 2006 Act.
2. The applicant referred to *Peardon v Underhill* [1850](S.C.20 L.J.Q.B.133)which found common pasture in a waste included land which the cattle may wander over in search of food, even though there may not be food on the spot itself. They also referred to the Commons Commissioners’ decision in the matter of Flaxton Village Green and Common Land where the Commissioner found a tarmacadam strip should be included in the common based on the above decision. They considered the metalling and subsequent tarring of a road across waste of the manor does not mean it ceases to be waste or common providing it remains open, uncultivated, and unoccupied. They also noted the public highway running through the adjoining parcels of registered common is registered as common land.
3. Before the hearing, the applicant agreed to the removal of the metalled highway from the application providing the Council agreed for the highway verge to be recorded as registered common. The Council withdrew their objection to the registering of the highway verge.
4. The applicant and Cornwall Council agreed to this amendment and no other parties objected. None of the parties raised any concerns about amending the application. Therefore, I consider the metalled highway should be removed from the application and should not be registered as common.

**Other Matters**

1. Several matters were raised in relation to the impact of the land being registered as common land. However, these issues were not relevant to the statutory tests outlined above.

# Conclusion

1. Having regard to these and all other matters raised at the Hearing and in the written representations I conclude that the application land fulfils the necessary criteria for registration. Consequently, I approve the application and the land shown coloured blue on the plan appended to this decision should be added to the commons register. The metalled highway hatched black has been removed from the application and should not be added.

Claire Tregembo

INSPECTOR

**APPEARANCES**

**The Applicant**

Dr. Frances Kerner Open Spaces Society

Tomas Hill

**For the Commons Registration Authority**

Martin Wright Commons Registration Officer, Cornwall Council

**Interested Parties**

Hamilton Blackburn Landowner

Graham Blackburn Landowner

Steve Nankivell Chair of Hamatethy Trustees of the Common

Jeremy Hooper Solicitor (retired) for Nancy Hall, Lord of the Manor, and Landowner

**DOCUMENTS (submitted at the Hearing)**

Extracts from A History of St. Breward: The Life of a Moorland Village

Letter and Statement from Graham Blackburn

Commons Commissioners’ decision dated 20 August 1979 regarding objections to Register Unit No. CL 195

Letter and plan dated 19 December 1995 between Cornwall County Council and Macmillans Solicitors concerning Hamatethy Common Land

**Application Plan**

