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# Application Decision

Site visit made on 17 June 2015

**by Alan Beckett BA MSc MIPROW**

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

**Decision date: 10 July 2015**

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## Application Ref: COM 636

Bosore Common, Kenwyn, Cornwall

Register Unit Number: CL 597<sup>1</sup>

Commons Registration Authority ('CRA'): Cornwall Council

- The application, dated 7 December 2013<sup>2</sup>, is made under paragraph 4 of Schedule 2 of the Commons Act 2006 ('the 2006 Act').
  - The application is made by Mr T D J S Hill.
  - The application is to register waste land of a manor as common land.
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## Decision

1. The application is granted and the parcel of land shown on the plan appended to this decision which is edged red and with red cross-hatching within the red edge shall be added to the register of common land.

## Procedural Matters

2. I carried out an unaccompanied inspection of the application land on the morning of 17 June 2015.

## The Application Land

3. The land which is the subject of this application comprises a strip of land of varying width to the north side of Newbridge Lane near to the properties known as Besore and Goonvean and a parcel of land to the south of Newbridge Lane.

## The Main Issues

4. Paragraph 4 (6) (a) of Schedule 2 to the 2006 Act provides that any person may apply to the CRA to register waste land of a manor as common in the register of common land. The Commons Registration (England) Regulations 2008 set out the procedures to be followed.
5. The application has been made in accordance with the provisions of paragraph 4 (2) of schedule 2 to the 2006 Act which provides that an application can be made where the land is waste land of a manor and where before 1 October 2008:
  - (a) the land had been provisionally registered as common land under section 4 of the 1965 Act;

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<sup>1</sup> Original common land register unit number.

<sup>2</sup> For the purpose of remedying non-registration or mistaken registration under the Commons Registration Act 1965 ('the 1965 Act'), the application must have been made before 31 December 2020.

- (b) an objection was made in relation to the provisional registration; and
- (c) the provisional registration was cancelled in any of the following circumstances:
  - (i) the provisional registration was referred to a Commons Commissioner under section 5 of the 1965 Act and the Commissioner had determined that although the land had been waste of the manor at some earlier time, it was not such land at the time of the determination because it had ceased to be connected with the manor and for that reason only the Commissioner refused to confirm the provisional registration;
  - (ii) the provisional registration was referred to a Commons Commissioner under section 5 of the 1965 Act and the Commissioner had determined that the land was not subject to rights of common and for that reason refused to confirm the provisional registration and the Commissioner did not consider whether the land was waste of a manor;
  - (iii) the person on whose application the provisional registration had been made requested or agreed to its cancellation (whether before or after its referral to a Commons Commissioner).

## **Reasons**

### ***The Application***

6. The CRA has confirmed that the application was properly made and that the required statutory procedures had been followed; that this is so has not been disputed by any party. From my examination of the papers submitted I am satisfied that the application is sufficient to meet the procedural requirements of paragraph 4 (6) (a) of the 2006 Act.
7. The applicant, Mr Hill, is an employee of Cornwall Council; consequently, the CRA has adopted a neutral stance with regard to the merits of the application.

### ***Whether the land at issue is waste land of a manor***

8. Land '*of a manor*' has been held to mean land which is, or was formerly, connected to a manor. The definition of '*waste land of a manor*' arising from the case of *Attorney-General v Hanmer* [1858] ('*Hanmer*') is '*the open, uncultivated and unoccupied lands parcel of the manor, other than the demesne lands of the manor*'. Land is '*of the manor*' if it can be shown to be land which is, or was, formerly connected to a manor<sup>3</sup>. '*Demesne land*' is land within a manor which is owned and occupied by the lord of the manor for his own purposes. For land to be '*occupied*' it is considered that there must be some exclusivity of physical use by a tenant or owner alone.
9. It is the applicant's case that the application land can be reasonably considered to be the waste land of the Manor of Trevethenick. In support of that contention, the applicant cites evidence from a number of sources. First, a lease of an enclosure on Bosore Common dated 1 March 1834 between the Earl of Falmouth and J S Enys and the Reverend Cornish states that the land is within the manor of Trevethenick. Secondly, a sale catalogue of lands

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<sup>3</sup> Hampshire County Council v Milburn [1990]

belonging to Viscount Falmouth dated 13 September 1920 identifies Lot 68 as comprising (amongst other land) Ordnance Survey parcels 2798 and 2808 which are identified in the sale schedule as 'waste'. Finally, the 1843 Kenwyn tithe map shows Bosore Common as parcel 1123 and the apportionment records parcel 1123 as being '*Downs, Waste and roads*' which extended to 32 acres, 2 roods and 38 perches.

10. Published guidance acknowledges that "*it is seldom possible to definitively prove that a particular parcel of land is of a manor. But it should be sufficient to show that, on a 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*<sup>4</sup>". In this case, although the supporting evidence adduced by the applicant is limited, I consider it to be sufficient for it to be reasonably concluded, on a balance of probabilities that the application land was once part of the Manor of Trevethenick. No evidence has been submitted to counter that reasonable conclusion.
11. The description of the application land as being open, uncultivated and unoccupied is not disputed. I saw at my site visit that the application land is not fenced off from Newbridge Lane and that save for some attempt at mowing the vegetation to the west of the entrance to Goonvean, none of the application land had the appearance of being cultivated or subject to any form of management regime. I do not consider that the mowing of vegetation to amount to the cultivation of part of the application land; in my view, the land is open and uncultivated. The application land did not have the appearance of ground which was being put to some physical use by one person to the exclusion of others; that is, the land is unoccupied. I concur with the applicant's assessment that the land satisfies the definition of waste land of the manor established by the *Hanmer* case.
12. The sole objection to the application was made by Cornwall Council as the owner of Besore and the access road which connects the property to Newbridge Lane. The application does not seek to include what appears to be the principal access to Besore but does include the spur to the west of the main access which crosses land owned by the Tregothnan Estate. The objector considers that the land crossed by the spur should also be excluded from the land for which registration is sought; however, the owner of the land crossed by the spur has made no objection to the proposed registration.
13. The objection made by Cornwall Council appears to be based upon a claim that Besore benefits from a prescriptive right of access over Tregothnan Estate land from Newbridge Lane. That may well be the case but I am not aware of any authority which demonstrates that the existence of private access rights (or the exercise of such rights) is inconsistent with the registration of land as common. Accordingly, I do not consider that the extent of the land for which registration is sought requires modification.
14. I conclude on the basis of the evidence before me that the application land is manorial in origin and that it has the character of waste land of the manor in that it is open, uncultivated and unoccupied.

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<sup>4</sup> Paragraph 9.3.16 Guidance to commons registration authorities and PINS for the pioneer implementation (version 1.46) January 2014

***Whether the application land was provisionally registered as common land under section 4 of the 1965 Act***

15. The application land was provisionally registered as common land (as part of CL 597) on 20 February 1970 following an application (reference No. 2090) made on 31 December 1969 by the Ramblers' Association.

***Whether an objection was made to the provisional registration***

16. An objection to the application (reference X423) was received by Cornwall County Council on 25 September 1970. A further objection (reference X735) was received on 12 January 1971. The stated ground of both objections was that the land was not common land at the date of the provisional registration.

***Whether the provisional registration was cancelled in the circumstances specified in paragraph 4 (3 - 5) of Schedule 2***

17. The written decision of the Commons Commissioner does not set out what terms were agreed between the parties which led to the non-confirmation of the provisional registration. The Commissioner's written decision does not give any indication as to what matters had been considered prior to the decision being made. There is therefore no positive evidence that the Commissioner had given consideration to the question of whether or not the application land was manorial waste. In the absence of any positive evidence that such consideration was given, I conclude that the question of manorial waste was not considered by the Commissioner.

18. The decision of the Commissioner to not confirm the provisional registration of CL 597 is dated 17 June 1980 and the provisional registration was cancelled on 24 April 1981.

19. I am satisfied that the circumstances of the cancellation of the provisional registration of the application land are those which are provided for by paragraph 4 (4) of Schedule 2 to the 2006 Act (as set out in paragraph 5 (c) (ii) above).

**Conclusion**

20. Having regard to these and all other matters raised in the written representations I conclude that, on a balance of probabilities, all the relevant criteria for the registration of the application land as common land are satisfied. It follows that I also conclude that the application should be granted.

*Alan Beckett*

Inspector

APPENDIX

