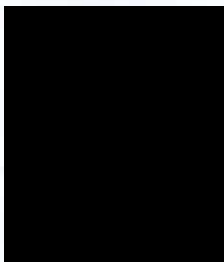


not constituent.  
d/w o.



Answer  
to CCW

DEFRA  
RECEIVED  
27 NOV 2013  
CCW  
POST ROOM

15<sup>th</sup> November 2013

Dear Mr Eustice

We are writing to you as one of many farmers/land owners in Penwith who are concerned about the recent application to register land as common land. We are tenant farmers on National Trust land at [REDACTED] father farmed the land before him and he took over the tenancy following his father's death [REDACTED]. We are at the moment in the process of an application for HLS to enable us with the help of Natural England and Cornwall Wildlife to continue to manage the land sensitively to allow access to the public and protect the environment for future generation. We are sure you are aware of the situation regarding new registrations of common land in Penwith, there have been an increasing number of registrations since the Commons Act of 2006. These registrations have all gone ahead despite the owners wishes, including in some cases existing undivided right Commoners also objecting to this change of land status.

The system of proposal seems flawed in the first place; land is identified by a group or individual with no connection to that piece of land. They neither own it, rent it nor indeed gain a living from it. However they are allowed 5 months to prepare their case often supported by the Council. In fact Cornwall Council appears to have a duty under its pioneer status to implement this legislation before other areas in the UK. The owner of the land is only allocated 6 weeks' notice before posting objections and because of the complexity of Common Land Law it is deemed insufficient time by many solicitors to build an effective defence, in certain circumstances extensions have been applied for and gained. In many cases the first the land owner is made aware of the potential change of status is when a poster appears on a gate. Also the proposer has a greater defence from the outset as their application relies on probability, all land for a period after the Norman Conquest was managed under a manorial system. Since the enclosure acts and the demise of those manors the land has often changed hands many times. No account is taken of land ownership since that date, it doesn't seem to matter which manor, in fact the name of the manor can change throughout the proposer's presentation without it affecting the outcome. Yet the owner of the land can prove actual ownership for some considerable time and can demonstrate sound management of the land including allowing access during his or her lifetime, all for nothing.

The issue is DEFRA definition of Common land is "unenclosed" however it goes further in stating that "waste land of manor" is unoccupied. Occupation as far as DEFRA are concerned does not include grazing animals. It goes further on to state that the construction of a fence on common land can only be done at the discretion of the Secretary of State. Both these constraints create enormous obstacles when land is being put forward for agri-environment schemes. Under the current 2006 act all applications have to be completed before August 2014

Agri-environment schemes require fencing because in Penwith the dominant grazing animal is cattle by a long way. Only cattle can return the moorland to its previous health of increased flora and fauna. These moorlands were always grazed by cattle and yes there would have been no fences. The cattle will over time recreate that diversity of flora and fauna, however modern movement controls developed to control cattle diseases such as TB, BSE, Foot and Mouth demand the farmer has control of his animals. It can no longer be the case that cattle can roam freely from one end of the Penwith Moors to the other.

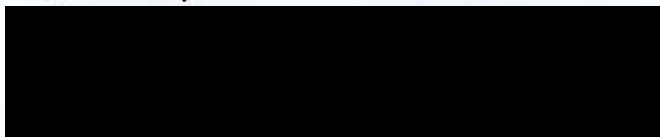
The reason for the removal of cattle over the past decades is one of economics, disease, and demand for more continental type animals. These rough moorland areas and the types of cattle that could graze them were no longer viable. As a result areas where they once grazed became over run with bracken, gorse and brambles and very little else. The net result of this encroachment was that access by the public became difficult and in some areas impossible. Irrespective of whether the land has Countryside Rights of Way Act, or Scheduled Ancient Monument, or AONB status, giving the land Common Land status will not increase the level of access. In fact moreover if fencing is denied because single issue lobby groups demand it so and the Secretary of State is overwhelmed with applications to deny fencing, the progress of Agri-environment schemes will falter. Grazing animals will beat back the encroachment of gorse, brambles and bracken, not to an extent that those species will disappear because stocking rates will be purposefully low to reduce the effect of poaching and the need to supply supplementary feed. The main species to benefit from grazing will be grass but as we have seen the once those dominant and impenetrable plants are knocked back many more species move in, not just plants but wildlife as well.

It is often raised the issue of protecting ancient monuments from grazing animals, because the bulk of the land has become inaccessible the only access has been to various ancient monuments is because of a footpath to a nearby road. In the first instance when animals are grazed on these areas this will be the area they are attracted to, as it is often surrounded by grass which has been encouraged by people access. No amount of land status designation will change the desire of an animal to find the easiest grazing first, over time as the animals beat back the bracken, gorse and brambles, they will encourage a larger grazing area which is accessible to man and beast.

It should not be underestimated the importance to farmers, landowners, access and tourism the importance of agri-environment schemes, as a means of increasing income. If common land status and pressure groups force difficulties in the construction of fencing, burning and scrub clearance then the whole economy of Penwith is affected not just those in direct receipt of Agri-environment payments.

We just want to be allowed to farm and manage this special area of land sensitively and allow access to the public without unnecessary complications.

Yours sincerely,

A large black rectangular redaction box covering the signature and name of the sender.

---

**From:** [REDACTED]  
**Sent:** 20 November 2013 09:09  
**To:** GEORGE, Andrew; EUSTICE, George; [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Commons Registration Applications by a minority pressure group

To all concerned,

Just wanted to add that we also attended the same meeting and are equally angered and frustrated by the actions of 'Save Penwith Moors' group.

We are in the process with the help of Natural England and Cornwall Wildlife of putting together our HLS application to enable us to continue to manage an area of Penwith Moors that is environmental sensitive with over 22 Archaeological features, to graze, burn and manage the land sensitively to protect local species and wildlife to enable access to the public now and for future generations to enjoy this special area. These Commons application just complicate and hamper the work local farmer are doing and this will only result in the land being left to go wild and inaccessible.

Regards

[REDACTED]





Department  
for Environment  
Food & Rural Affairs

CCU 7<sup>th</sup> Floor  
Nobel House  
Smith Square  
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T 08459 335577  
helpline@defra.gsi.gov.uk  
www.gov.uk/defra

Our ref: DWO329844/SH

January 2014

Dear [REDACTED]

#### **Applications to register land as common land**

Thank you for your letter of 15 November to George Eustice about applications to register land as common land. I have been asked to reply and I am sorry this is late.

I am sorry to hear of your concerns. Much common land, including that which is also a site of special scientific interest (SSSI), is currently under agri-environment agreement, particularly in the South and North West of the country. If you have not already done so, you may wish to talk to Natural England about the implications for any agri-environment agreement should the land be registered as common land.

As with much legislation, the Commons Act 2006 attempted to establish a balance. It is widely acknowledged that the Commons Registration Act of 1965 is flawed and the Commons Act 2006 sought to build upon and correct the flaws of the 1965 Act. Just as the 2006 Act enables land which was incorrectly registered to be removed from the register, so it also enables land which should have been registered to be added. All of the provisions of the Act were debated during its passage through both Houses. The resulting provisions represent Parliament's intention to enable the registration of waste land as common land. This therefore cannot really be characterised as flawed.

Section 22 and Schedule 2 of the Commons Act 2006 allows amendment of the commons registers in certain prescribed circumstances. Waste land of the manor can be registered as common land under paragraph 4 of Schedule 2 to the Commons Act 2006, but only where it meets certain prescribed criteria. In effect, these criteria amount to the fact that there was an application to register the land under the Commons Registration Act 1965 but due to a variety of misunderstandings the land was not finally registered. Applications to make amendments to the commons registers can be made by any person or individuals acting on behalf of a group of people.



INVESTORS  
IN PEOPLE



The motives of the applicant and objectors are not taken into account in determining such applications, nor the effect of future management if land is registered as common land. What matters is whether the applicant can prove to the independent planning inspector, beyond reasonable doubt, that they have shown the land meets the regulatory requirements for registration as common land. An objector such as a landowner has to prove that at least one of the criteria does not apply. If it does not meet the requirements, then the land will not be registered as common land. The Planning Inspectorate, as well as finding for recent applications in Cornwall, has also found against certain parcels of land being registered as common land. There is a six week period for objections, which is a reasonable timeframe. By way of comparison, the period to raise objections for planning applications is between three and eight weeks.

Cornwall Council is one of seven commons registration authorities pioneering the implementation of Part 1 (Registration) of the Commons Act 2006, ahead of national implementation. I understand that the council was particularly keen that the people of Cornwall should make use of Schedule 2 at an early opportunity, both to de-register land wrongly registered as common land or village green and for the registration of 'waste land of the manor'.

Yours sincerely,

  
Defra - Customer Contact Unit



INVESTORS  
IN PEOPLE

19<sup>th</sup> of November 2013

Dear Mr Eustice MP

I would like to raise the issue of new registrations of common land in Penwith; there have been an increasing number of registrations since the Commons Act of 2006. These registrations have all gone ahead despite the owners wishes, including in some cases existing undivided right Commoners also objecting, to this change of land status. The system of proposal seems flawed in the first place; land is identified by a group or individual with no connection to that piece of land. They neither own it, rent it nor indeed gain a living from it. However they are allowed 5 months to prepare their case often supported by the Council. In fact Cornwall Council appears to have a duty under its pioneer status to implement this legislation before other areas in the UK. The owner of the land is only allocated 6 weeks before posting objections and because of the complexity of Common Land Law it is deemed insufficient time by many solicitors to build an effective defence, in certain circumstances extensions have been applied for and gained. In many cases the first the land owner is made aware of the potential change of status is when a poster appears on a gate. Also the proposer has a greater defence from the outset as their application relies on probability, all land for a period after the Norman Conquest was managed under a manorial system. Since the enclosure acts and the demise of those manors the land has often changed hands many times. No account is taken of land ownership since that date, it doesn't seem to matter which manor, in fact the name of the manor can change throughout the proposer's presentation without it affecting the outcome. Yet the owner of the land can prove actual ownership for some considerable time and can demonstrate sound management of the land including allowing access during his or her lifetime, all for nothing.

The issue is DEFRA definition of Common land is "unenclosed" however it goes further in stating that "waste land of manor" is unoccupied. Occupation as far as DEFRA are concerned does not include grazing animals. It goes further on to state that the construction of a fence on common land can only be done at the discretion of the Secretary of State. Both these constraints create enormous obstacles when land is being put forward for agri-environment schemes. Under the current 2006 act all applications have to be completed before August 2014. Agri-environment schemes require fencing because in Penwith the dominant grazing animal is cattle by a long way. Only cattle can return the moorland to its previous health of increased flora and fauna. These moorlands were always grazed by cattle and yes there would have been no fences. The cattle will over time recreate that diversity.



of flora and fauna, however modern movement controls developed to control cattle diseases such as TB, BSE, Foot and Mouth demand the farmer has control of his animals. It can no longer be the case that cattle can roam freely from one end of the Penwith Moors to the other.

The reason for the removal of cattle over the past decades is one of economics, disease, demand for more continental type animals. These rough moorland areas and the types of cattle that could graze them were no longer viable. As a result areas where they once grazed became over run with bracken, gorse and brambles and very little else. The net result of this encroachment was that access by the public became difficult and in some areas impossible. Irrespective of whether the land has Countryside Rights of Way Act, or Scheduled Ancient Monument, or AONB status, giving the land Common Land status will not increase the level of access. In fact moreover if fencing is denied because single issue lobby groups demand it so and the Secretary of State is overwhelmed with applications to deny fencing, the progress of Agri-environment schemes will falter. Grazing animals will beat back the encroachment of gorse, brambles and bracken, not to an extent that those species will disappear because stocking rates will be purposefully low to reduce the effect of poaching and the need to supply supplementary feed. The main species to benefit from grazing will be grass but as we have seen the once those dominant and impenetrable plants are knocked back many more species move in, not just plants but wildlife as well.

It is often raised the issue of protecting ancient monuments from grazing animals, because the bulk of the land has become inaccessible the only access has been to various ancient monuments is because of a footpath to a nearby road. In the first instance when animals are grazed on these areas this will be the area they are attracted to, as it is often surrounded by grass which has been encouraged by people access. No amount of land status designation will change the desire of an animal to find the easiest grazing first, over time as the animals beat back the bracken, gorse and brambles, they will encourage a larger grazing area which is accessible to man and beast. It should not be underestimated the importance to farmers, landowners, access and tourism the importance of agri-environment schemes, as a means of increasing income. If common land status and pressure groups force difficulties in the construction of fencing, burning and scrub clearance then the whole economy of Penwith is affected not just those in direct receipt of Agri-environment payments.

Yours faithfully

A solid black rectangular box used to redact the signature and name of the sender.





**Department  
for Environment  
Food & Rural Affairs**

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www.gov.uk/defra

Our ref: DWO329723/SH

December 2013

Dear [REDACTED]

**Common land application in Zennor**

Thank you for your email of 20 November to George Eustice and Andrew George about a common land application in Zennor. I have been asked to reply.

It is widely acknowledged that the Commons Registration Act of 1965 is flawed. Therefore, the Commons Act 2006 sought to build upon and correct the flaws of the 1965 Act.

Cornwall Council is one of seven commons registration authorities pioneering the implementation of Part 1 (Registration) of the Commons Act 2006, ahead of national implementation. The council was particularly keen that the people of Cornwall should make use of Schedule 2 at an early opportunity, both for the registration of 'waste land of the manor' and to de-register land wrongly registered as common land or village green. This is shown by the number of applications and determinations published on its website:

<http://www.cornwall.gov.uk/default.aspx?page=2621>

Section 22 and Schedule 2 of the Commons Act 2006 allows amendment of the commons registers in certain prescribed circumstances. Waste land of the manor can be registered as common land under paragraph 4 of Schedule 2 to the Commons Act 2006, but only where it meets certain prescribed criteria. In effect, those criteria amount to the fact that there was an application to register the land under the Commons Registration Act 1965 but due to a variety of misunderstandings the land was not finally registered. This is why the 2006 Act allows for such land to be registered. Applications to make amendments to the commons registers can be made by any person or individuals acting on behalf of a group of people.

The motives of the applicant and objectors are not taken into account in determining such applications, nor the effect of future management if land is registered as common land. What matters is whether the applicant can prove to the independent planning inspector, beyond reasonable doubt, that they have shown the land meets the regulatory requirements for registration as common land. If it does not meet the requirements, then the land will not be registered as common land. The Planning Inspectorate, as well as finding for recent applications in Cornwall, has also found against certain parcels of land being registered as common land.



**INVESTORS  
IN PEOPLE**

Legislation represents Parliament's intention to achieve an aim or an objective, so the registration of waste land as common land is clearly intended and is by no means a loophole.

Common land can continue be managed, but with due regard to legislation concerning common land. Further guidance is available on the websites of Defra and the Planning Inspectorate:

<https://www.gov.uk/browse/housing/safety-environment/land-use-and-management>

<http://www.planningportal.gov.uk/planning/countryside/commonland/guidance>

I hope this has helped to explain Defra's position.

Yours sincerely,

  
Defra - Customer Contact Unit



INVESTORS  
IN PEOPLE

**Sent:** 24 November 2013 15:42

**To:** GEORGE, Andrew; [REDACTED] EUSTICE, George

**Subject:** West Penwith Moors - registration of commons

Dear Sirs,

Although I have tried, I can't pretend to understand the motivation of the 'save Penwith moors campaign' or their latest manipulation of the legislature. Whilst I have sympathy for the sufferers of OCD I hope that this condition does not apply to this group.

It may have been a worthy pass time for small boys to keep the cows on the common before fencing years ago and important to have legislation to make sure landowners did not illegally fence and annex land held in common. But on Penwith, fencing is a small and proportionate price to pay for the many benefits that the return of traditional breeds of native cattle to Penwith Moors can bring. We still need to connect the general population with agriculture these gentle breeds are the perfect ambassadors as they graze the moors back to heathland.

So far the law in this case has acted on the side of common sense, please use your powers for our common good and prevent an artificial common of scrub.

yours sincerely  
[REDACTED]

---

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To [REDACTED]  
CC :  
Subject : Penwith Moor

Dear [REDACTED]

Thank you for your email of 24 November to George Eustice. I have been asked to reply and I am sorry this is late.

As with much legislation, the Commons Act 2006 attempted to establish a balance. It is widely acknowledged that the Commons Registration Act of 1965 is flawed and the Commons Act 2006 sought to build upon and correct the flaws of the 1965 Act. Just as the 2006 Act enables land which was incorrectly registered to be removed from the register, so it also enables land which should have been registered to be added. All of the provisions of the Act were debated during its passage through both Houses. The resulting provisions represent Parliament's intention to enable the registration of waste land as common land.

Section 22 and Schedule 2 of the Commons Act 2006 allows amendment of the commons registers in certain prescribed circumstances. Waste land of the manor can be registered as common land under paragraph 4 of Schedule 2 to the Commons Act 2006, but only where it meets certain prescribed criteria. In effect, these criteria amount to the fact that there was an application to register the land under the Commons Registration Act 1965 but due to a variety of misunderstandings the land was not finally registered. Applications to make amendments to the commons registers can be made by any person or individuals acting on behalf of a group of people.

The motives of the applicant and objectors are not taken into account in determining such applications, nor the effect of future management if land is registered as common land. What matters is whether the applicant can prove to the independent planning inspector, beyond reasonable doubt, that they have shown the land meets the regulatory requirements for registration as common land. An objector such as a landowner has to prove that at least one of the criteria does not apply. If it does not meet the requirements, then the land will not be registered as common land.

Common land can continue be managed, but with due regard to legislation concerning common land. Further guidance is available on the websites of Defra and the Planning Inspectorate:

<https://www.gov.uk/browse/housing/safety-environment/land-use-and-management>

<http://www.planningportal.gov.uk/planning/countryside/commonland/guidance>

I hope this has helped to explain Defra's position.

Yours sincerely

[REDACTED]  
Defra – Customer Contact Unit

George Eustice MP  
Parliamentary Under-Secretary of State for DEFRA  
House of Commons  
London  
SW1A 0AA

29<sup>th</sup> November 2013

Dear Mr Eustice

**URGENT REQUEST FOR HELP**

**Negative Impact of applications to register waste land of the manor as common land - under The Commons Act 2006. Section 22: Schedule 2(4)**

I am writing to you to see if there is any way that you can help the farmers in our parish.

Zennor Parish Council is deeply concerned about recent and ongoing applications to register land within the parish as common land, owing to the negative impact this will have on the sustainability of local farming business and the sensitive management of our internationally important natural and historic environment.

A small-select group of people going under the name of Save Penwith Moors are attempting to re-categorise our moor and cliff land as 'common land', even though they neither own nor manage any of this land.

In contrast, a meeting recently held at very short notice in our village hall was attended by thirty-five local people in order to share their strong concerns that this re-categorisation will drastically affect many family-run farms along this coast, by stopping farmers joining and carrying out work under the agri-environmental schemes on which they rely heavily for their livelihoods.

Our heathland is classified as SSSI and there is an obligation for it to be maintained in a good and improving condition in terms of its biodiversity. The most cost-effective way of achieving this is to graze with cattle, which also helps keep archaeological monuments clear of damaging vegetation; other management methods are impractical on our rocky moors and cliffs.

This continues a farming tradition dating back to prehistoric times and reflected in the parallel-strip pattern of landholdings in Zennor, with each farm incorporating, above and below its enclosed fields, areas of inland moor and coastal cliff as an essential part of the farming regime (being historically used not only for grazing, but also as a source of turf for fuel and bracken for animal bedding).

Grazing with cattle or other livestock requires infrastructure (such as fencing, water troughs, stiles) and granting of common land status prevents any works without permission first being obtained from the Secretary of State, at a potentially prohibitive cost to the farmer of £5000 per application.

The landscape in Zennor is one of the most protected in the country and under the CROW Act all our moors are covered by the Right to Roam. It is unclear to us why this land needs another layer of protection and what the common land applications are trying to achieve, particularly when the

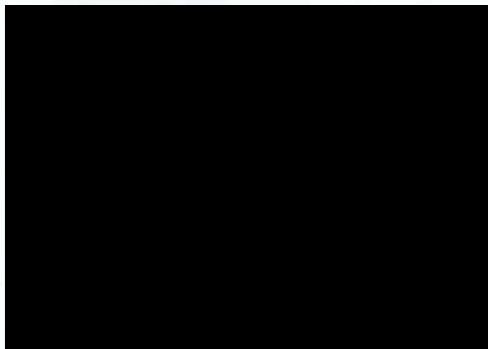
designations will hinder National and European directives and funding programmes for supporting farmers to manage the land in order to maximise its biodiversity and historic environment value.

Our understanding is that the legislation was designed to protect communal spaces such as village greens, and its use to reclassify individually owned farmland seems an inappropriate legal loophole that needs to be closed.

In addition, Zennor Parish Council is currently considering preparing a Neighbourhood Plan in accordance with the Localism Act 2011. We feel that, as it is a planning issue, consideration of whether or not to designate areas as common land should be included in that process and that no areas in the parish should be designated in advance of the Neighbourhood Plan.

I appeal to you to help us prevent these common land applications.

Yours sincerely



Letter sent to:

Andrew George MP, St Ives Constituency

George Eustice MP, Parliamentary Under-Secretary of State for DEFRA

[Redacted] SW Regional Director, National Farmers Union

[Redacted] County Advisor, National Farmers Union

[Redacted] Chairman, National Farmers Union







Department  
for Environment  
Food & Rural Affairs

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www.gov.uk/defra

Our ref: DWO330304/SH

11 December 2013

Dear [REDACTED]

**Common land**

Thank you for your letter of 29 November to George Eustice about an application to register waste land of the manor as common land in Zennor. I have been asked to reply.

It is widely acknowledged that the Commons Registration Act of 1965 is flawed. Therefore, the Commons Act 2006 sought to build upon and correct the flaws of the 1965 Act.

Cornwall Council is one of seven commons registration authorities pioneering the implementation of Part 1 (Registration) of the Commons Act 2006, ahead of national implementation. The council was particularly keen that the people of Cornwall should make use of Schedule 2 at an early opportunity, both for the registration of 'waste land of the manor' and to de-register land wrongly registered as common land or village green. This is shown by the number of applications and determinations published on its website:

<http://www.cornwall.gov.uk/default.aspx?page=2621>

Section 22 and Schedule 2 of the Commons Act 2006 allows amendment of the commons registers in certain prescribed circumstances. Waste land of the manor can be registered as common land under paragraph 4 of Schedule 2 to the Commons Act 2006, but only where it meets certain prescribed criteria. In effect, those criteria amount to the fact that there was an application to register the land under the Commons Registration Act 1965 but due to a variety of misunderstandings the land was not finally registered. This is why the 2006 Act allows for such land to be registered. Applications to make amendments to the commons registers can be made by any person or individuals acting on behalf of a group of people.

The motives of the applicant and objectors are not taken into account in determining such applications, nor the effect of future management if land is registered as common land. What matters is whether the applicant can prove to the independent planning inspector, beyond reasonable doubt, that they have shown the land meets the regulatory requirements for registration as common land. If it does not meet the requirements, then the land will not be registered as common land. The Planning Inspectorate, as well as finding for recent applications in Cornwall, has also found against certain parcels of land being registered as common land.



INVESTORS  
IN PEOPLE

Legislation represents Parliament's intention to achieve an aim or an objective, so the registration of waste land as common land is clearly intended and is by no means a loophole.

Some 57% of sites of special scientific interest (SSSIs) are also commons and the two designations actually complement other. Common land can continue be managed, but with due regard to legislation concerning common land. Any works on land which are necessitated by SSSI requirements are taken into consideration when consent is sought for works on commons. Further guidance is available on the websites of Defra and the Planning Inspectorate:

<https://www.gov.uk/browse/housing/safety-environment/land-use-and-management>

<http://www.planningportal.gov.uk/planning/countryside/commonland/guidance>

I hope this has helped to explain Defra's position.

Yours sincerely,

  
Defra - Customer Contact Unit



INVESTORS  
IN PEOPLE



Ref. Dw0330304/SH

Dear [REDACTED]

Thank you for your reply, however I still have some concerns, the main ones being,

1) You state, "The application does not take into account the effect of future management"

Under European legislation it is the Governments responsibility to have these areas of land either stable or improving, so it has to take this into account.

2) You state "Legislation represents Parliaments intention to achieve an aim or an objective"

Our MP informs us that a main objective and aim written into this was, "To help and be of benefit both in practice and financially to the farming community"

3) With tightening European budgeting at some point in the future they could easily reclassify Common land as not eligible for farm subsidies, which would be a catastrophe for the farms along this coast who rely on them so heavily in this already recognised deprived area of the country.

Best wishes [REDACTED]

To: [REDACTED]

CC:

Subject : Commons registration

Dear [REDACTED]

Thank you for your email of 18 December further to my letter of 11 December. I am sorry the reply is late.

Firstly, as I explained in my last email, the effect of future management if land is registered as common land is not taken into consideration when determining applications. The decision is made on a purely legal basis: the applicant must prove to the independent planning inspector, beyond reasonable doubt, that they have shown the land meets the regulatory requirements for registration as common land. How the land is managed is an entirely separate issue.

If you wish to look more closely at the objectives of the legislation, I would suggest you read the explanatory notes of the Act (<http://www.legislation.gov.uk/ukpga/2006/26/contents> ) and the record of the Parliamentary debate of the relevant clauses in Hansard (<http://www.parliament.uk/business/publications/hansard/> ).

We cannot predict what will emerge in future European legislation. However, we have no reason to expect that common land would be excluded from funding under the Common Agricultural Policy. This is particularly apparent when considering its benefits to biodiversity, both in England and continental countries, and its role in sustaining agricultural communities on marginal land.

Yours sincerely

[REDACTED]  
Defra – Customer Contact Unit

Your Ref. MC 329513/SH

COMMON LAND.

*Rogerson*  
*Ree*

Dear Lord de Mauley,

I am writing on behalf of Zennor Parish Council who unanimously wish to show their support for the farming businesses in our Parish who are being steam rolled into having parts of their land made into Common land against their wishes, as voiced at a recent packed meeting.

Recently farmers have taken great steps under agri/environmental schemes in converting some of these areas from impenetrable bracken, brambles and gorse into a haven of biodiversity of numerous plants and animals, and in so doing, opening them up aiding public access and enjoyment. Due to the capital works required to do this (styles, water troughs, public access gates, etc) if made common land would require further approval from the Sec of state, at I believe £5,000/application.

This would make it extremely unlikely any further land would be improved or entered into these schemes.

With EU budgets tightening, if common land becomes no longer eligible for subsidy, the ~~farms~~ farms in our Parish would become unviable overnight, and anything that has a negative impact on these businesses could be disastrous in a part of the country already recognised as one of the most deprived.

Cornwall Council is suppose to be taking a neutral stance on this, and yet it is actively submitting

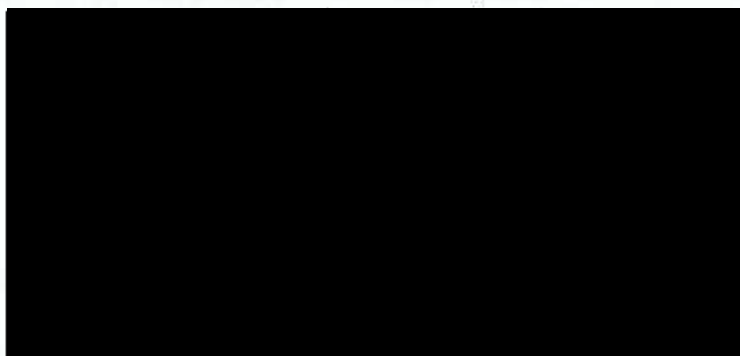


many of these applications itself. The only land that I've heard of the inspectorate finding against are ones the landowner has pointed out as being pasture or arable fields being submitted.

In Conclusion, in making these areas Common land, it is unlikely to achieve anything positive, as it is already some of the most protected land, and would add an extra level of Red tape when the Government is supposed to be reducing it.

Making the land more difficult / cumbersome to manage will be bad for the environment and the public.

Yours sincerely





**Department  
for Environment  
Food & Rural Affairs**

CCU 7<sup>th</sup> Floor  
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T 08459 335577  
helpline@defra.gsi.gov.uk  
www.gov.uk/defra

Our ref: DWO335844/SH

19 February 2014

Dear [REDACTED]

**Common Land**

Thank you for your letter of 25 January to Lord de Mauley about the registration of common land in Zennor. I have been asked to reply.

I am afraid that I am unable to usefully add anything to my previous replies to you on this issue.

Yours sincerely,

[REDACTED]  
Defra - Customer Contact Unit



**INVESTORS  
IN PEOPLE**

[REDACTED]  
[REDACTED]  
**From:**

**Sent:**

**To:**

**Subject:**

**Attachments:**

11 December 2013 16:10

CCU Correspondence (AHEG)

RE: Ref:DWOE000329394 - Penwith Moors - Application 2841 Morvak Cliffs

Image001.png

Dear [REDACTED]

We note from your reply to [REDACTED] that the current round of applications to register land as common is being enabled by the 2006 act because mistakes and "misunderstandings" made in 1965. In other words the aim is to correct the assessment of the land as extant in 1965. Speaking as someone with half our farm under a current threat of a change of registration status from freehold to common may I ask what those "misunderstandings" were please? And also can you confirm that the prescriptions relating to the CROW Act 2000 have no bearing on any application to correct mistakes of 1965 since that Act was not extant in 1965 please?

Best Regards

[REDACTED]



To : [REDACTED]

CC :

Subject : registering of common land

Dear [REDACTED]

Thank you for your email of 11 December, further to mine of 10 December to [REDACTED]

Non-registration or mistaken registration under the Commons Registration Act 1965 is addressed in Schedule 2, paragraph 4 of the Commons Act 2006. This states that an application or proposal may be made only in respect of land which is not currently registered as common land or a green. The criteria for registration of land are set out in paragraph 4(2) to (5), to the effect that:

- the land is waste land of a manor,
- the land was provisionally registered as common land under section 4 of the 1965 Act,
- there was an objection to its provisional registration,

and the provisional registration was subsequently cancelled on account of one (or more) of the following:

- the registration was dismissed by the Commons Commissioner solely because the land had ceased to be connected with the manor,
- the registration was dismissed by the Commons Commissioner because the land was not subject to rights of common, and the Commissioner did not go on to consider whether the land qualified instead for registration as waste land of the manor, or
- the registration was withdrawn at the request or with the agreement of the applicant for registration.

The Court of Appeal decided in 1978 in the Box Hill case that 'waste land of a manor' must still be in the ownership of the lord of the manor. However, the court's decision was subsequently overruled in 1990 by the House of Lords in the Hazeley Heath case. Between 1978 and 1990, many provisional registrations of common land were cancelled by the Commons Commissioner solely on the grounds of the Box Hill judgment, or were withdrawn by the applicant for registration in anticipation of cancellation and were out of time or ineligible for appeal following the decision in Hazeley Heath.

Regarding the Countryside and Rights of Way Act 2000, the right of access under part 1 applies to land which has been mapped on a conclusive map as open country (mountain, moor, heath and down) or registered common land. Land has to be included in the commons register and mapped on a conclusive map issued by Natural England before the right of access can apply.

Yours sincerely

[REDACTED]  
Defra – Customer Contact Unit

[REDACTED]  
6 December 2013 10:21

JUSTICE, George

Re: george eustice common land registrations

December 2013

George Eustice M.P.

Mr. Eustice,

I have known your family for lots of years, and it is good to see a young man from this area  
so well in politics. Congratulations!

Of course I realise that you are not my MP. But I have also written to Andrew George and as you  
are Under Secretary of State for Natural England I feel I should put you in the picture as  
to the state of applications that are going in at present to register common land. So this is  
appended to me.

[Identifying information removed]

The NFU did manage to get an extension of a couple of weeks, but not really enough. When I told [redacted] that I would be putting in an objection, he assured me the registration would make no difference to me at all. I would still own it, I could rent it, farm it and still pick up government subsidies on it as before, which at present looks very doubtful.

The Save Penwith Moors group asked Madron Parish Council to support their application, but they voted not to. So [redacted] said they were of no consequence, as they didn't know what they were voting on anyhow.

Save Penwith Moors claim that the land is uncultivated unoccupied and open, my family have occupied and farmed this land since [redacted] We have run cattle on it, cur bracken off it, and before it became a scheduled ancient monument we planted a row of trees on it. If this is not occupation within the DEFRA guidelines then the guidelines need changing.

Waste land of the Manor.

[Identifying information removed]

So the point I want to make is that unless the DEFRA rules are changed or a different interpretation put on them these people are going to win every time and on all bits of rough land, if they only have to suggest that the land was at some time waste land of a manor, and don't have to prove anything, nor do they have any connection with the land.

At present DEFRA want us to actively manage the rough land for the good of wildlife Etc. yet the way the rules are written the people who call themselves Save Penwith Moors who do not own nor manage any of the land are going to be able to have control over what is done to it.

To sum up.

Save Penwith Moors have unlimited time to prepare their application, any one who wishes to object only 5 or 6 weeks.

Waste land of a manor.

The way this is treated at present, it seems to me any land anywhere is probably or possibly wasteland of a manor, any manor so it doesn't really matter which.

Open, uncultivated, and unoccupied.

Most of the rough land in West Cornwall cannot be ploughed for one reason or another, so if grazing, cutting bracken etc. is not farming or occupying it then the DEFRA rules again mean that we shall lose control of land which we have farmed for generations, to people who know nothing of land management, to the detriment of the landscape and wildlife in particular.

So I would ask you to do your best to change the way the DEFRA rules are interpreted to put a stop to this spate of common land registrations. This has nothing to do with public access as most of this land has open access through the Right to Roam act already. This is merely an attempt by a very small number of people to interfere with the farmers managing their land as DEFRA advises.

Kind Regards  
[redacted]

Was going to send this as a letter but printer broke down!



To [REDACTED]

CC :

Subject : Penwith Moors

Dear [REDACTED]

Thank you for your email of 7 December to George Eustice about common land registrations. I have been asked to reply and I am sorry that this is late.

As with much legislation, the Commons Act 2006 attempted to establish a balance. It is widely acknowledged that the Commons Registration Act of 1965 is flawed and the Commons Act 2006 sought to build upon and correct the flaws of the 1965 Act. Just as the 2006 Act enables land which was incorrectly registered to be removed from the register, so it also enables land which should have been registered to be added. All of the provisions of the Act were debated during its passage through both Houses. The resulting provisions represent Parliament's intention to enable the registration of waste land as common land.

Section 22 and Schedule 2 of the Commons Act 2006 allows amendment of the commons registers in certain prescribed circumstances. Waste land of the manor can be registered as common land under paragraph 4 of Schedule 2 to the Commons Act 2006, but only where it meets certain prescribed criteria. In effect, these criteria amount to the fact that there was an application to register the land under the Commons Registration Act 1965 but due to a variety of misunderstandings the land was not finally registered. Applications to make amendments to the commons registers can be made by any person or individuals acting on behalf of a group of people.

The motives of the applicant and objectors are not taken into account in determining such applications, nor the effect of future management if land is registered as common land. What matters is whether the applicant can prove to the independent planning inspector, beyond reasonable doubt, that they have shown the land meets the regulatory requirements for registration as common land. An objector such as a landowner has to prove that at least one of the criteria does not apply. If it does not meet the requirements, then the land will not be registered as common land. The Planning Inspectorate, as well as finding for recent applications in Cornwall, has also found against certain parcels of land being registered as common land. There is a six week period for objections, which is a reasonable timeframe. By way of comparison, the period to raise objections for planning applications is between three and eight weeks.

The definition of occupation is complex and has been developed over the years through case law, so Defra has no intention to amend the definition. If you want a fuller understanding of the definition I recommend reading what Gadsden on Commons and Greens has to say on the subject. Gadsden is the recognised authority on the law of commons and town and village greens.

Yours sincerely

[REDACTED]  
Defra – Customer Contact Unit

# MADRON PARISH COUNCIL

Chairman: Councillor [REDACTED]

DEFRA  
RECEIVED

03 JUL 2014

CCU  
POST ROOM

[REDACTED]  
Common Land Casework Officer  
The Planning Inspectorate  
3/25 Hawk Wing  
Temple Quay House  
2 The Square  
Bristol  
BS1 6PN

Yours ref: COM 576

27<sup>th</sup> June 2014

Dear [REDACTED]

## **Application to Register Waste Land of the Manor – Carn Downs**

Madron Parish Council discussed this matter at their Ordinary Meeting on 3<sup>rd</sup> April 2014 and as a result of that I was instructed to write to [REDACTED] the Senior Development Officer, Land Charges, (Highways Commons and Greens) at Cornwall Council with objections from this council. I enclose a copy of this letter dated 8<sup>th</sup> April 2014.

In view of your letter of 12<sup>th</sup> June 2014 and its attachments it was decided to call an Extraordinary Meeting of this council to agree our response. This was held at Madron Community Rooms on 26<sup>th</sup> June and as well as councillors, local people with concerns were present at the meeting.

At this stage we regret we are unable to clarify if we would wish to speak at an inquiry due to a serious ambiguity in what is, or is not, now the subject of the application. One of the attachments to your letter is from the applicant dated 15<sup>th</sup> April 2014 in which he states that he agreed in October 2013 to withdraw some fields from the application. We also note in the same letter that the applicant "wishes to withdraw all land that is not CROW Act 2000 land, and remaining land that is CROW Act land to form the basis of the application". We do not feel that it is reasonable for the Registering Authority to allow the applicant to make such substantial changes to the application at such a late date and particularly after the closing date for consultations.

However we have received no communication from Cornwall Council directly that these substantial changes have been made to the application, the letter dated 15<sup>th</sup> April by the applicant forwarded by PINS to ourselves is the only indication we had that something had changed on the application.





The application on which we commented on 8th April 2014 is therefore substantially different from that the one that we are being asked to submit comments on to the PINS.

As far as we can ascertain, no map of this application in what we believe to be its "current" form has been issued by Cornwall Council to any of the interested parties.

Also two of the landowners concerned, [REDACTED] informed us at our meeting on 26<sup>th</sup> June that they had received letters telling them their land was withdrawn from the application yet still asking if they wished to speak at an inquiry if one was held. [REDACTED] posed the question to us : "Speak on what subject. Is my land still in the application?"

We have checked the Cornwall Council planning website (27th June 2014) and the application plan shown on the website clearly shows [REDACTED] land still included. We consider that the Registering Authority has a duty to ensure that the process is managed in a straight forward, informative manner, that does not cause unnecessary stress and inconvenience to the parties involved, with all interested parties kept up to date with any changes and allowed to comment. We do not consider it acceptable for the Registering Authority to allow the applicant to make changes as he "goes along" in the light of any objections that come up, particularly after the closing date for responses.

We cannot decide if we would wish to speak on behalf of our parishioners at any inquiry unless we know for certain what land is or is not the subject of that inquiry. If there are changes to the application then these should be published for the public to see. In this respect the application should be managed like any planning application. Changes should require the application to be withdrawn, amended and resubmitted for public comment. In that way we would now all be looking at an application where the attached maps accurately portrayed the subject land and its boundaries. You may consider that Cornwall Council should have managed this process before passing the application on to your office.

As the action currently resides with your office, we request that you initiate the clarification that seems to be sorely needed in this matter.

Yours sincerely

[REDACTED]

Copies to:

[REDACTED] Senior Development Officer, Cornwall Council  
Phil Mason, Head of Service for Planning, Cornwall Council  
Lord de Mauley, Department of Environment, Food and Rural Affairs

# MADRON PARISH COUNCIL

Chairman: Councillor [REDACTED]

[REDACTED]

Senior Development Officer  
Land Charges (Highways) and Commons & Greens  
Room F2 06,  
Circuit House  
St Clement Street  
Truro  
TR1 1DT

8<sup>th</sup> April 2014

Dear [REDACTED]

## **Madron Parish Council Objection to Application 2849 for the Registration of Land as Common**

This application was discussed by Councillors at Madron Parish Council Meeting on 3<sup>rd</sup> April 2014 and I have been instructed to write to you listing the strong objections to application 2849 for registration of the land at Morvah Carn and Bosulow Trehyllys as Common Land on the following grounds:

1. Objections being submitted to the Planning Authority by the relevant land owners and farmers include evidence that land is ineligible for registration due to it having been subjected to cultivation and some enclosure. Madron Parish Council is unanimous in fully supporting these submissions.
2. Madron Parish Council sees no benefit accruing to the parish through an act of registering the subject lands as common land. It would in fact be a retrograde step for our community. Much of this land is already open access land over which the public can walk. Many of the archaeological features are Scheduled Ancient Monuments and as such are already protected by existing legislation. Making this land common does nothing to improve on what legislation is already in place.

3. It is important to the community that this land is managed. Many farmers are able to put land, particularly on or around the moors, into Higher Level Stewardship (HLS). There are many elements to this but one of the most prominent is the grazing of cattle to control gorse and encourage the growth of heather, creating biodiversity, keeping the land open for walkers and preventing bracken from damaging monuments. To comply with Tb restrictions farmers have to provide permanent fencing across the land to ensure that cattle do not mix with other herds. This is a very important tool in controlling the spread of Bovine Tb, a serious problem for the farming industry. Changing the status to common land will mean that farmers wishing to pursue conservation and wildlife schemes under HLS will require planning permission for fencing. Such is the expense and difficulty and time delays obtaining this it is highly likely that many farmers will not bother with such schemes. This would result in:

- A. Reduced public access as the overgrowth created in accessible areas.
- B. A loss to the community of wildlife, biodiversity and scenic enjoyment.
- C. Increased fire risk on the land
- D. A reduction in farm incomes as conservation and wildlife schemes are an important revenue stream for farmers, consequently damaging the rural economy within the parish.

Yours sincerely

[Redacted signature]

[Redacted address]

Dear CCV,  
I'm not sure why  
Lord de Mawley has  
been copied into this  
correspondence. Could  
you look into it?

[Redacted signature]



Lord de Mauley  
Parliamentary Under Secretary of  
State for Natural Environment and  
Science

DEFRA  
RECEIVE

08 JUL 2

CCU  
POST ROOM

3<sup>rd</sup> of July 2014

Dear Lord de Mauley

I have received a number letters to which Andrew George MP has copied me in to, concerning common land which he has received from you. My involvement thus far has been to act as facilitator at meetings where attendance has been in excess of 40 on a number of occasions. I see the use by farmers of HLS agreements as real aid in not only protecting the environment but as means of supporting farm businesses. The Commons Act 2006 is threat to livelihoods by reducing potential take up of HLS agreements or creating cross compliance issues as fencing is delayed in planning.

There have been 22 applications for common land in the Penwith (West Cornwall Area) by Save Penwith Moors SPM. Every one of these applications is for privately owned land that has been in the ownership of farmers for multiple generations. This is land which by and large is owned singularly by a farmer in identifiable areas, not as you would consider common land such as Bodmin or Dartmoor and is normally CROW Act land. The assumption being that "Waste land of Manor" circa 1066AD plus CROW Act land 2000AD = Common Land. DEFRA's failure to actively define common land, leaving it instead for others to define the legislation is typical of Government, passing the expense through law courts and hearings rather than make a decision itself.

The purpose of these applications is fundamentally to restrict fencing through the planning process by SPM. I suggest you visit their website [www.savepenwithmoors.com](http://www.savepenwithmoors.com) to see their views on grazing and fencing of "croft" land in the area.

Cornwall Council is a pioneer council in supporting this legislation yet its conduct over the whole process has been poor to say the least. In many cases it has actively supported cases with SPM, yet as a Council it should remain independent but positive through the process; one of its own officers was responsible for putting his own applications forward, thereby creating work for himself; the Council and SPM fail to do sufficient research on the ownership of the land in question, with the result that the SPM chops and changes the application ad libitum. I understand so frustrated is a local Parish Council with the flexible approach to the applications that it would appear SPM can it remove land as it pleases. Were an application for new house to be built, delivered in such an ad hoc manner then the Parish or County would have little knowledge of what was being presented was it a bungalow or a three story manor house.

I would also like to bring to your attention the National Trust is also objecting to an application for land at Zennor. It has employed a top barrister to defend the case and spent a considerable sum of money so far. The Trust is seriously questioning DEFRA's determination of "open", "cultivated", "enclosed" and "occupied". For the National Trust to challenge this legislation says many things about how the legislation was formulated and the quality of the discussion that led to the Commons Act of 2006. The only reason the NT isn't challenging every case on its land is because of cost, yet individual farmers are challenging this either on their own or with the support of the NFU and CLA. Unfortunately that hearing was adjourned because yet again the Council failed to inform all landowners of the application and then on the second day of the hearing a local farmer produced a document dating back many years of how the land had been divided by the Manor to members of her family. The hearing was adjourned until December, however there are three more hearings to come which without the benefit of precedent, set by the NT hearing. These hearings set for August and October will go forth without real definition as to what common land is, relying unfortunately on DEFRA's vague terminology.

The whole process is seen as an attack by small group of people utilising a piece of legislation which was ill conceived. In Andrew George's MP opinion SPM are making a mockery of the law, which they are. The process is causing dissent and upset amongst the rural community who see no advantage at all in the process; over land they have cared for generations. Farmers have allowed access through the vast network of footpaths, the coastal path and the Tinner's Way and St Michael's Way and much of the land is already CROW Act land in any case, without hindrance or issue. In fact many have gained through the tourist pound; common land is not seen in the same light, by some it is even considered as theft, they have lost the land over which their forefathers worked. Yet don't understand why and what if any is the public gain.

Natural England is currently undertaking a programme to map much of this land with a view to place it under SSSI status. Yet another level above - CROW Act, AONB, HLS agreements, Scheduled Ancient Monument Status, Town and Country Planning Act which is already in place. How much more unnecessary red tape does a piece of land need? Once a piece of land has SSSI status then it would require fencing to protect over and above the common land status.

The whole process is red rag as far the farmers see it, to the extent that it is souring relations with regard to Natural England's attempt to reclassify the land SSSI. As a Government you say you are trying to save money and on so many fronts this is utter waste of money, yet our local Council would rather close a toilet or a bus service than stop this process.

I would therefore like to invite you to West Cornwall to answer to the local people why this process is so important and so upsetting.

I look forward to your response.

Yours faithfully

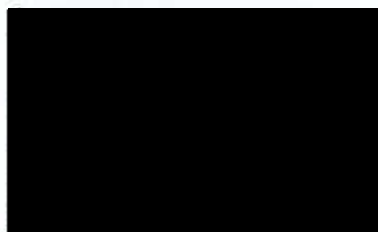




Department  
for Environment  
Food & Rural Affairs

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Smith Square  
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T 03459 335577  
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www.gov.uk/defra



Our ref: DWO352232

31 July 2014

Dear 

**Common land**

Thank you for your letter of 3 July to Lord de Mauley about common land in Cornwall. I have been asked to reply.

When the registers of common land were compiled in the late 1960s many mistakes were made in relation to applications for the registration of land and/or rights of common. Much land was registered as common land or town or village green when it was not. Similarly much land that should have been registered as common land was not.

When applications to register common land received objections they were referred to the Commons Commissioner for adjudication. The Commissioner had to determine, firstly, whether the land was subject to rights of common and if it was not, whether it instead qualified as waste land of a manor. Often only the first test was carried out or the application was withdrawn or refused on the basis of ownership. With respect to the latter two, they would be largely attributable to a High Court ruling (*Box Hill* case, 1978) that land had to remain in the ownership of the Lord a manor in order to meet the 'of a manor' test. This ruling was later overruled by the House of Lords (*Hazeley Heath* case, 1990), which ruled that land met the test provided it had been part of a manor.

There is a public interest in correcting the registers of common land as they are the legal record. The correction of anomalies is not solely as a matter of dispute between the parties to the application. In his judgement in *Corpus Christi College, Oxford v Gloucestershire County Council*, Lord Denning MR said: *"I cannot think it correct for the commons commissioners to treat these cases as if they were pieces of civil litigation, such as a lis inter partes, in which the applicants have to prove their case. ... The hearing by the commissioner should be regarded more as an administrative matter, to get the register right, rather than as a legal contest. The commons commissioner should inquire carefully whether any land is common land, and, if it is, register it in the land section accordingly."* This is why paragraph 4 of Schedule 2 to the Commons Act 2006 allows for the registration of waste land.



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However, the test for such applications has two dimensions, which make it difficult for land to qualify: the historical and the present. The historical is that the land was provisionally, but not finally, registered owing to the refusal or withdrawal of an application or a failure on the part of the Commons Commissioner to consider whether land was waste land of a manor. In other words, this land would have been registered as common land were it not for the Box Hill ruling. 'Present' means the land today must remain 'waste land', which the courts have defined as land that is open, unoccupied and uncultivated. Land cannot be registered unless it fulfils the meaning of all three limbs (i.e. it is open and uncultivated but is occupied in some way).

You claim that the Commons Act 2006 is a threat to potential take up of Higher Level Stewardship, but we do not see how this can be so. The registration of waste land does not confer any rights of common so the management of the land will remain in the same hands. Common land status generally complements agri-environment agreements. For example whilst section 38 of the Commons Act 2006 prohibits illegal works on commons, applications for consent to fencing have a very high rate of success. Retrospective consent would not need to be sought for any existing fencing. If Natural England has suggested that fencing is the best means of managing land under an agreement (e.g. for conservation) then this is even more likely to result in consent (NB provided all other questions are answered satisfactorily). It follows that the Save Penwith Moors campaign is unlikely to achieve its aim of preventing fencing of land by submitting applications to register waste land as common land.

Yours sincerely,

  
Defra

Customer Contact Unit



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