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| **Application Decision** |
| Site visit made on 10 January 2023 |
| **by Helen O'Connor LLB MA MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 12 January 2023** |

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| **Application Ref: COM/3300554****Land at Radfall Road, Blean**Register Unit No: CL 113Commons Registration Authority: Kent County Council |
| * The application, dated 29 December 2020, is made under paragraph 4(6)(a) of Schedule 2 to the Commons Act 2006 (the 2006 Act).
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| * The application is made by the Open Spaces Society.
* The application is to add land to the register of common land on the grounds that it constitutes waste land of a manor not registered as common land within the circumstances specified in paragraph 4 of Schedule 2 to the 2006 Act.
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Decision

1. The application is granted.

**Application land**

1. The application land comprises two broadly triangular parcels either side of a section of Radfall Road, a trackway within woodlands at Blean Woods National Nature Reserve (BWNNW). The application land amounts to approximately 1 hectare. The section of Radfall Road bisecting the application land is itself a linear strip of common land (unit CL 113). The application land is denoted with a purple dashed line on the plan at Appendix 1.

**Preliminary Matters and background**

1. Paragraph 4 of Schedule 2 to the 2006 Act enables certain land to be registered as common land subject to it meeting the provisions specified within paragraph 4. This includes that applications must be made before the specified date (in this instance 31 December 2020). There is no dispute in this case that the application was made prior to the relevant deadline.
2. Such an application may only be made in respect of land which is waste land of a manor at the date of the application and was provisionally registered as common land under section 4 of the Commons Registration Act 1965 (the 1965 Act). In addition, there must have been an objection to its provisional registration and the provisional registration was subsequently cancelled on account of one or more of three circumstances. In this case, the application refers to paragraph 4(5) of the 2006 Act, which stipulates that the person on whose application the provisional registration was made requested or agreed to its cancellation. It follows that the requirements of the 2006 Act have largely informed the main issues under consideration for this application.
3. However, there are additional general statutory duties to which I must also have regard as the application land is within the BWNNR, the Church Woods Site of Special Scientific Interest (SSSI) and the Blean Complex Special Area of Conservation (SAC). Various duties to conserve and enhance biodiversity are contained in the Natural Environment and Rural Communities Act 2006, the Wildlife and Countryside Act 1981 (in relation to land designated as SSSI) and the Conservation of Habitats and Species Regulations 2017 (as amended).
4. The Commons Registration (England) Regulations 2014 (the Regulations) set out the procedures to be followed for applications made under paragraph 4 of the 2006 Act. Furthermore, I have had regard to the relevant guidance contained in ‘Part 1 of the Commons Act 2006: Guidance to commons registration authorities and the Planning Inspectorate’ issued by the Department for Environment, Food and Rural Affairs dated December 2014 (the 2014 guidance).
5. The task of proving the case in support of the correction of the register rests with the applicant, and the burden of proof is the normal civil standard, namely, the balance of probabilities.
6. I carried out an unaccompanied site visit. The application has been determined on the basis of the written evidence, the comments submitted and my observations of the site.

Main Issues

1. The main issues in this case are:
* Whether the application land was waste land of a manor at the time of the application.
* Whether the land was provisionally registered as common land under section 4 of the 1965 Act, and if so, whether an objection was made to the provisional registration.
* Whether the provisional registration was cancelled due to the person on whose application the provisional registration was made requesting or agreeing to its cancellation.
* Consideration of other relevant statutory duties.

Representations

1. Representations objecting to the application have been received from the Royal Society for the Protection of Birds (RSPB) who lease the application land. They suggest that the land was withdrawn from the provisional registration because it was unsound. They go on to raise two principal concerns with the application land acquiring common land status.
2. Firstly, as reflected in the various nature conservation designations, the land possesses considerable value as habitat for wildlife. Additional recreational public access could threaten the flora and fauna that inhabit the land. They consider that disturbance may result to, amongst other species, dormice, nightingales and heath fritillary butterflies. They highlight that public access is available via public rights of way and bridleways present in BWNNR. Secondly, increased public access to the application land would present difficulties when carrying out forestry activities, which can be hazardous.
3. Natural England who are the freehold owners of the land indicate that they have no comments to make regarding the application.

**REASONS**

***Whether the application land was waste land of a manor at the time of the***

***application***

1. As a result of case law, waste land of a manor is generally taken to mean the open, uncultivated and unoccupied lands parcel of the manor, other than the demesne lands of the manor. It has further established that it is not relevant for these purposes whether the land continues to be held by the lord of the manor, but rather the land must be of manorial origin.
2. The 2014 guidance gives further insight into the interpretation of ‘waste land’ having regard to this definition. It confirms that the vast majority of land in England is formerly of a manor and suggests potential sources of useful information to aid research, including the national archives and local records offices. It states that it is seldom possible to prove definitively that a particular parcel of land is of a manor. Nevertheless, it should be sufficient to show that on the balance of probabilities that 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.
3. The applicant has outlined the evidence upon which they assert that the application land is waste land of the manor of Blean alias Hoath Court. The land is within woodland historically referred to as the Blean, which according to the historian Edward Hasted in his description of the county of Kent in 1800 was the ‘king’s antient forest’ and that all the forests were ‘antiently waste grounds’. Further deductions have been derived from historic papers including those contained in the Canterbury Cathedral Archives, the National Archives, Lambeth Palace Library and tithe surveys relating to the parish of Blean.
4. In addition, the physical evidence of the land demonstrated through photographs and a detailed description is consistent with the historic picture presented. The application land is woodland and is adjacent to a section of registered unit CL 113. The land is unenclosed relative to the Radfall Road trackway and retains a natural uncultivated appearance. This accords with my own observations. Moreover, paragraph 7.3.14 of the 2014 guidance states that ‘occupation’ requires some physical use of the land to the exclusion of others. I did not glean that the application land was so occupied during my site visit.
5. Although the RSPB assert that the provisional registration of the land may have been cancelled because it was unsoundly made, they have not suggested that the application land is not waste land of a manor. No convincing evidence has been provided to undermine the findings presented within the application before me.
6. Accordingly, on the balance of probabilities, I find that the application land is waste land of a manor at the time the application was made.

***Whether the land was provisionally registered as common land under section 4 of the 1965 Act, and if so, whether an objection was made***

1. The extract of the common land register and map for unit CL 113 reveals that the application land was included as part of the land provisionally registered under application reference 453 on the 20 May 1969 by Mr P A Firmin of Hillside Farm, Blean. This has not been disputed.
2. Neither is it disputed that an objection was received from the Nature Conservancy on 7 July 1972, albeit that the objection related to all of the land provisionally registered.
3. Therefore, I am reasonably satisfied that criteria (a) and (b) of sub-paragraph 2 of paragraph 4, Schedule 2 of the 2006 Act are met.

***Whether the provision registration was cancelled due to the person on whose application the provisional registration was made requesting or agreeing to its cancellation***

1. The extracts of the common land map further show that the application land in this case is marked as ‘void’. The land section of the register has an entry amending the description to land extending to a width of half a rod (2.5 metres) each side of the centre line on Radfall Road. This entry became final on 13 August 1973.
2. In addition, I have been provided with a letter dated 25 July 1973 from the Nature Conservancy to Kent County Council. The Nature Conservancy refer to Mr Firmin’s application and that an agreement had been reached between the parties such that they withdrew their objection. They specify for the record, that the agreement reached was to the effect that the registration made by Mr Firmin extends only to a width of half a rod each side of the centre line on Radfall Road. On balance, this points to Mr P Firmin having agreed to the cancellation of the subject land as part of his original application, and I have seen no evidence which would lead me to conclude otherwise.
3. Qualification under paragraph 4(5) of the 2006 Act only refers to the provisional registration being cancelled at the original applicant’s request, or their agreement. It is therefore unnecessary to speculate further on why they may have done so.
4. Therefore, I am reasonably satisfied that criterion (c) of sub-paragraph 2 of paragraph 4, Schedule 2 of the 2006 Act is met as the circumstances fulfil those outlined in paragraph 4(5).

***Consideration of other relevant statutory duties***

1. Paragraph 5.11.39 of the 2014 guidance states that applications must generally be granted if made in accordance with the criteria set out in the legislation, and there will seldom be circumstances in which the decision is subject to discretion which may be influenced by the statutory duties outlined earlier.
2. Even so, I acknowledge the general point made by the RSPB that unrestricted public access to wildlife habitats is more likely to lead to harm rather than enhance nature conservation or further biodiversity. There is potential for increased trampling, and dog-walking may exacerbate the level of disturbance to certain wildlife and/or increase dog fouling. Mindful of the statutory duties previously mentioned, these are matters to which I have had regard.
3. In this instance there is already a linear strip of common land that divides the application land upon which there is an established path. The information provided points to it also forming a public right of way through the BWNNR. Within the context of the BWNNR the application land is modestly sized and constitutes only a small proportion of the wider woodland habitat at the BWNNR. Neither is the application land at any point a considerable distance from the established pathway. Moreover, a change in status to common land would not, of itself, result in a physical alteration to the appearance of the land as woodland.
4. Realistically this is likely to mean the following. Firstly, that the number of members of the public seeking to access CL 113 would be unlikely to be fundamentally altered, as they would probably be visiting the wider BWNNR rather than a specific parcel of common land. Additionally, given that a useable path already exists within CL 113, it is probable that most people would find it preferable to use it when traversing the area. Consequently, the extent of any additional trampling is likely to be marginal. Furthermore, the degree of disturbance to the land either side of the path arising from the presence of humans and their dogs in comparison to the existing situation is unlikely to discernibly change.
5. The evidence does not indicate that the modest area of application land houses a particular concentration of vulnerable or rare species within the BWNNR. Accordingly, having regard to the general statutory duties to conserve and enhance biodiversity, I am not convinced that there are circumstances in this case that would justify interfering with the specific provisions of the 2006 Act that allow for the rectification of land provisionally registered that was wrongly struck out.

**Other matters**

1. I appreciate that there are likely to be more onerous safety considerations for those seeking to undertake forestry operations in areas where the public have access. However, such works can be, and often are carried out with reasonable safety precautions in place. That is not a sound reason to set aside the provisions of the 2006 Act.

**Conclusion**

32. Having regard to the matters above, and all other relevant matters raised in the written representations, I conclude that, on the balance of probabilities, the criteria for the registration of the application as common land are satisfied. Accordingly, it should be added to the register of common land.

**Formal decision**

1. The application is granted, and the land shown within the purple dashed line on the plan at Appendix 1 shall be added to the register of common land as part of register unit CL 113.

Helen O’Connor

Inspector

**Appendix 1**

**Not to scale**

