

**Application Decision**

Hearing held on 29 March 2023

# By J Burston BSc(Hons) MA MRTPI AIPROW

An Inspector appointed by the Secretary of State for Environment Food and Rural Affairs pursuant to Regulation 4 of The Commons Registration (England) Regulations 2008 to determine the application.

**Decision date: 14 April 2023**

# Application Ref: COM/3303956 Great & Little Molunan, Gerrans Cornwall

Register Unit: CL 341 (Original provisional registration number)

Registration Authority: Cornwall Council

* The application, dated 22 December 2020, is made under Schedule 2 paragraph 4 of the Commons Act 2006 (‘the 2006 Act’).
* The application is made by Mr T Hill.
* 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 on the plan attached to this decision shall be added to the commons register.

**Preliminary matters**

1. I held a hearing at County Hall, Truro on 29 March 2023. I carried out a site visit on 28 March 2023 accompanied by those parties that so requested with respect to their interests in the land concerned.
2. Following the submission of the application, the plan accompanying the proposal was amended to exclude the ‘landing stage’ as its inclusion was a mapping error. The amended plan was circulated to the parties who had an opportunity to comment. No objections were received. I have therefore taken the amended plan into account in my consideration of this application.

**The Application Land**

1. The application land is known as Great & Little Molunan Beach and is mainly situated between the mean low and high water mark. The South West Coast Path runs along the top of the headland to the east of the application site.

# Main Issues

1. The main issue is whether the land is waste land of a manor 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. Sub-paragraph (5), on which the applicant relies, requires that the person on whose application the provisional registration was made requested or agreed to its cancellation (whether before or after its referral to a Commons Commissioner).
2. It is seldom possible to prove definitively that a particular parcel of land is 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.

# Reasons

## Whether the land had been provisionally registered as common land under section 4 of the Commons Registration Act 1965

1. The land was provisionally registered as common land unit CL 341 on 23 October 1968 following an application from The Gerrans Parish Council dated 14 June 1968.

## Whether an objection was made to the provisional registration

1. Objections were raised to the provisional registration of CL 341, on 21 July 1972 by Major N.D.S Grant-Dalton.

**Whether the provisional registration was cancelled as set out in sub-paragraph (5)**

1. Entry 2 in the Register of Common Land (RCL) dated 17 July 1973, records that the provisional registration was modified under Regulation 8 of the Commons Registration (Objections and Maps) Regulations, 1968.
2. This permitted the Commons Registration Authority (CRA) to cancel or modify a registration to which objection was made, at the request of the applicant. The RCL sets out that the land was removed pursuant to an application dated 8 July 1973 made by the Gerrans Parish Council. This fulfils the criteria of paragraph 4(5) of Schedule 2 to the 2006 Act.

## Whether the land is waste land of a manor

1. I was informed at the Hearing that the vast majority of land in England is formerly of a manor, notable exceptions being Crown land which is relevant in this case as the application land is primarily foreshore. Waste land of a manor was defined in the case of Attorney General v Hanmer (1858) “*The true meaning of “wastes”, or “waste lands”, or “waste grounds of the manor”, is the open, uncultivated and unoccupied lands parcel of the manor, or open lands parcel of the manor other than the demesne lands of the manor*.”
2. In the case of Hampshire County Council and others v Milburn (1990) (often referred to as the ‘Hazeley Heath’ case) the House of Lords decided that ‘waste land of a manor’ means waste land of manorial origin and accordingly refers to both waste land which belongs to a manor and waste land which formerly belonged to a manor.
3. In the Hazeley Heath case Lord Templeman explained: The manorial system which the Normans partly inherited and partly established displayed a variety of local laws and customs but in general there were three categories of land comprised in a manor:
4. The demesne land belonged to the lord of the manor.
5. The copyhold land was divided between the tenants of the lord of the manor.
6. The remainder of the land consisted of uncultivated land referred to as the waste of the manor.
7. The waste land belonged to the lord of the manor subject to the rights of the tenants to enjoy in common the fruits or some of the fruits of the soil in the manner of a ‘profit à prendre’.
8. Extracts taken from Halsbury’s Laws of England have been provided by both the applicant and the objector to assist in the consideration as to whether the foreshore is manorial land:

* Halsbury’s Laws of England, Vol 29, para 166 (Crown Property) “*The Crown's prima facie title no longer holds good in the case of foreshore on the coast of Cornwall because, by a statute based on a charter of Edward III, the Crown's rights to the foreshores in Cornwall were vested in the Duke of Cornwall, except when they belong to a subject. The rights to the foreshore as between the Crown and the Duke of Cornwall are now regulated by statute*.”
* Halsbury’s Laws of England, Vol 32, paragraph 97 (Extent of a manor) “*The extent of a manor depends upon what was comprised in the original grant by the Crown or superior lord, if such a grant survives, and may include the foreshore of the sea1*. *Later usage is admissible to explain the meaning of such a grant2*.”

1. Footnote 1 which supports the second bullet point sets out “*Re Manor of Walton-cum-Trimpley, ex p Tomline (1873) 28 LT 12; A-G v Vandeleur [1907] AC 369, HL. Although the Crown is prima facie owner of the foreshore by prerogative right, and there is a presumption in favour of the Crown (see generally CROWN AND CROWN PROCEEDINGS vol 29 (2019) para 161), it has been held that ‘in the majority of cases the right to the foreshore between high and low water mark is in the Lord of the Manor’ (see Le Strange v Rowe (1866) 4 F & F 1048 at 1052, per Erle CJ).*
2. Le Strange v Rowe concerned an action by the lord of a manor for trespass, in taking shellfish and shingle on the foreshore of the manor, between high and low water mark, his title being under a royal grant of the manor, but with no express mention of the shore. It was held, that this grant afforded, of itself, a presumption that it included the soil of the shore.
3. Footnote 2 which supports the second bullet point sets out *“Duke of Beaufort v Swansea Corpn (1849) 3 Exch 413; and see Calmady v Rowe (1844) 6 CB 861; and PARA 50.”*
4. The Duke of Beaufort v Swansea Corpn judgement concerned whether the seashore between high and low water mark may be parcel of the adjoining manor; and where, by an ancient grant of the manor, its limits are not defined, modern usage is admissible in evidence to show that such sea shore is parcel of the manor. The objector states that this judgement confirms that the bounds of the manor do not typically include land below the mean high-water mark and low water mark unless the evidence confirms otherwise. Whilst I agree that a case turns on the evidence before the decision maker, this judgement confirmed that evidence of modern acts of ownership was held to have been properly admitted as evidence to show that grants by King John and King Edward I of certain lands by the terms of "*Terra de Grower*," and “*Dominium de Terne de Gower*," included the sea coast down to low water mark.
5. There is no dispute that the objector and his family have owned the ‘Place Estate’ for over 300 years. Whilst no deeds have been presented, a letter from G.E.M Trinick (the landowners agent), dated 5 February 1973, states in relation to Great and Little Molunan Beaches that “*These beaches, together with the foreshore on their inland side, have been in the ownership of Major Grant-Dalton and of his Forebears for some 300 years*.”
6. Whilst this goes some way to prove ownership, the issue to be considered here is whether the land is, or has been, of a manor. Given that that the land was originally sold with the foreshore and that the owner has been able to sell sections of the foreshore it would seem plausible that the manorial land also included the application site. There has been no evidence presented to show that the application land was purchased separately by the Place Estate from the Duchy.
7. In support of the registration the applicant states that the application site is situated in the Manor of Bohurrow, a listed manor in the Manorial Documents Register (MDR) which is a repository for a variety of documents potentially related to a manor. Whilst I have no ‘original grant’ documents before me, the MDR does include reference CF/3/2435.2438 which is described as *“[CF/3/2438] Foreshore maps, St Anthony and St Just in Roseland, Cornwall. Not dated. Series of maps showing foreshore of parishes of St Anthony and St Just with separate duplicate plans of coast of Bohurrow, Barton of Place, part of Manor of Bohurrow, Part of Tregear-Vean, Camerrans, Cruglase and St Mawes and St Mawes Harbour. 15 items”.* However,I do not have these foreshore documents before me to appraise their context and as such I cannot afford them any weight*.*
8. The ‘St Anthony in Roseland, Cornwall’ Tithe Apportionment document, dated 1841 - 1843, describes the land and premises surrounding the application site as the ‘Manor of Bohurrow’. The copy of the Tithe Map before me does not benefit the foreshore in question, or indeed any area of foreshore, with an apportionment number, although it does depict high and low water marks, coves and beaches.
9. As I was informed at the Hearing, manors are of ancient origin dating from before Norman times. The Manors were assigned by the Crown and at some point, the Manor of Bohurrow was monastic land. Following the Dissolution of the Monasteries between 1536 - 1541 the Crown sold monastic property. This could have been the point where the ‘Manor of Bohurrow’ became privately owned. I appreciate that there is some conjecture involved in this statement, however it is seldom possible to prove definitively that a particular parcel of land is of a manor and the objector has provided no convincing evidence to the contrary.
10. Taken together, the evidence adduced does support the applicant’s case that the land in question was historically part of the Manor of Bohurrow, which at that time included the foreshore. The Halsbury’s Laws of England and related caselaw also support the point that manorial land can include the foreshore.
11. With regard to the comment that by virtue of the Great Charter of 1337 the foreshore around Cornwall was granted to the Duke of Cornwall and that much of the foreshore within the Charter remains in the ownership of the Duchy, the Duchy have informed the applicant that they have no interest in this land (email dated 6 March 2023). In any event, even if the land was part of the Duchy’s estate that does not preclude the land as being of manorial origin.
12. Having regard to the above, the evidence of the land being of a manor is persuasive and without convincing evidence to the contrary I consider that the evidence is sufficient, on the balance of probabilities, to show that the application land is of a manor.

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

1. The definition of waste land of a manor arising from the case of Attorney General v Hanmer [1858] 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. For land to be occupied it is considered that there must be some exclusivity of physical use or control by a tenant or owner alone. The question as to whether land is waste land of the manor is one which must be satisfied at the time of the application. In view of my findings above it is necessary to consider whether the application land fulfils the character of waste land of a manor.

Open

1. Generally, ‘open’ in this context means unenclosed. On my visit I noted that although the land is bounded on its north eastern boundary by cliffs and to the south west by the sea, the land itself is unenclosed. The land is not fenced from the adjacent South West Coast Path. Where fencing does exist, its purpose appears to be to enclose the adjacent land rather than the application land. I have seen no evidence to suggest that the situation was any different 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. On my site visit I saw no obvious indication of cultivation. It is argued by the objector that a beach cannot be used for cultivation and therefore there is no alternative. Nevertheless, cultivation can include a wide range of potential works and it is possible that foreshore can be managed for activities such as seaweed harvesting, samphire crops and mussel beds. Moreover, as there is no officially accepted definition of what constitutes cultivation for the purpose of the 2006 Act, it is therefore necessary to consider each case individually and assess the degree of cultivation that has taken place.
2. In this case, the amount of cultivation taking place at the time of the application appears to have been nil and it is my view that it is reasonable to describe the land as uncultivated for the purpose of 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 the lawful use of the land. There is no evidence that the land is managed to the exclusion of others, indeed a rope and steps are available to access the beaches. Accordingly, I would describe the land as unoccupied.
2. In conclusion, at the time of the application, the land had the character of waste land of the manor in that it was open, uncultivated and unoccupied.

**Other Matters**

1. A number of matters have been raised in relation to the impact of the land being registered as common land. However, these issues are 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 and consequently I approve the application.

J Burston

INSPECTOR

**APPEARANCES**

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| **The Applicant:** |  |
| Mr T Hill |  |
| **The Objector:** |  |
| Mr Grant-Dalton | Landowner |
| Mr R Bagwell | Solicitor, Stephens Scown LLP, agent for the Landowner |
| Ms S Petrucci | Solicitor, Stephens Scown LLP, agent for the Landowner |
| **Interested Party:** |  |
| Mr M Wright | Commons Registration Officer, Cornwall Council |

**DOCUMENT (submitted at the Hearing)**

Photograph taken by Mr T Hill on the site visit, dated 28 March 2023.

