

**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/3305817 Beaches north and south of Creek Stephen Point, Portscatho, Gerrans Cornwall

Register Unit: CL 342 (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 an unaccompanied site visit on 28 March 2023.

# The Application Land

1. The application land is known as Creek Stephen Point and consists of areas of beaches/foreshore mainly situated between the mean low and high water mark. The South West Coast Path runs along the top of the headland to the north west 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 CL342 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 CL342, on 27 May 1970 by His Royal Highness Charles Prince of Wales Duke of Cornwall.

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

1. Entry 2 in the Register of Common Land (RCL) dated 19 July 1973, records that the provisional registration was modified under Regulation 8 of the Commons Registration (Objections and Maps) Regulations, 1968. 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 24 June 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.
2. 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*.”
3. 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.
4. 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:
5. The demesne land belonged to the lord of the manor.
6. The copyhold land was divided between the tenants of the lord of the manor.
7. The remainder of the land consisted of uncultivated land referred to as the waste of the manor.
8. 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’.
9. At the Hearing the applicant provided an extract of section 22 of the Commons Registration Act 1965. This provides an interpretation of the term ‘common land’ and that ‘land’ includes ‘land covered with water’.
10. With reference as to whether the foreshore formed part of manorial land extracts of Halsbury’s Laws of England have been cited including 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*.” And 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 sea*. *Later usage is admissible to explain the meaning of such a grant*.”
11. In support of the registration the applicant states that the application site is situated in the Manor of Treluggan. The Manor is described in ‘The Parliamentary Survey of the Duchy of Cornwall Part II, published January 1984 ’ as laying “*in the Parish of Gerrans, but included land as far away as Constantine Parish. It was acquired by the Duchy in 1540, and had previously been part of the lands of Henry Courtenay, Marquis of Exeter*.” The 1651 Parliamentary Survey states that “*the said Manor is bounded on the East by the sea.*”
12. The objector comments that ‘there is no evidence that the Duchy acquired the foreshore during the 1540 conveyance of the Manor of Treluggan because the manor did not include the foreshore’. However, the objector has not provided any evidence of its land holdings and the applicant stated at the Hearing that he was refused access to the Duchy’s manorial records.
13. This evidence does support the applicant’s case that the land in question was historically part of the Manor of Treluggan, which at that time included the foreshore. The Halsbury’s Laws of England also support the point that manorial land can include the foreshore.
14. 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. Whilst this may be the case, even if the land was part of the Duchy’s estate that does not preclude the land as being of manorial origin.
15. 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 by a tenant or owner alone.
2. 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 site visit I noted that although the land is bounded on its north, north-western boundary by cliffs and to the south, south-east by the sea, the land itself is unenclosed. Where hedges and 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. There is no officially accepted definition of what constitutes cultivation for the purpose of the 2006 Act, and it is therefore necessary to consider each case individually and assess the degree of cultivation that has taken place. 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 steps are available to access the beaches, and as such I consider that the land is unoccupied.
2. In conclusion, at the time of the application, the land in question 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

29.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 |  |
| **Interested Party:** |  |
| Mr M Wright | Commons Registration Officer, Cornwall Council |

**DOCUMENT (submitted at the Hearing)**

Extract of section 22 of the Commons Registration Act 1965.

