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| **Application Decision** |
| Hearing held on 1 August 2023Site visits undertaken on 31 July 2023 and 1 August 2023 |
| **by Mark Yates BA(Hons) MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 7 September 2023** |

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| **Application Ref:** **COM/3313181** **Land at Bury Wood, Near Hemel Hempstead, Hertfordshire** |
| Register Unit: CL 78  |
| Registration Authority: Hertfordshire County Council |
| * The application, dated 26 December 2020, was made under paragraph 4 of Schedule 2 to the Commons Act 2006 (‘the 2006 Act’).
* The application was made by Dr F. Kerner on behalf of the Open Spaces Society.
* The application is to register waste land of a manor as common land.

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**Decision** 1. The application is approved.

**Preliminary Matters**1. The application relates to a rectangular parcel of land known as Bury Wood which is shown coloured blue on the attached plan (‘the plan’). It lies directly to the south of Sheethanger Common (coloured green on the plan). The areas coloured pink were excluded from the application as they are not considered by the applicant to fulfil the requirements of paragraph 4 of Schedule 2 to the 2006 Act.

**Main Issues**1. The main issues are whether the land is waste land of a manor and whether:
2. the land was provisionally registered as common land under Section 4 of the Commons Registration Act 1965;
3. an objection was made in relation to the provisional registration; and
4. the provisional registration was cancelled in the circumstances specified in sub-paragraph (3), (4) or (5) within paragraph 4 of Schedule 2 to the 2006 Act.
5. Reliance is placed in this case on sub-paragraph 5, namely 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).

**Reasons*****Whether the land was provisionally registered as common land*** 1. An application was made by the Berkhamsted Citizens Association (‘BCA’) on 14 December 1967 to register various pieces of land. One of these was known as Sheethanger Common and it included the areas coloured blue and pink on the plan. This land was provisionally registered as unit CL78 on 7 February 1968.
2. The land included in the present application was provisionally registered as common land. The fact that some areas of land that were provisionally registered were not included by the applicant does not mean that her application is invalid. The issue to be determined under paragraph 1 to Schedule 4 of the 2006 Act is whether any land not registered as common land satisfies the relevant statutory criteria.

***Whether an objection was made to the provisional registration***1. An objection to the provisional registration of the land at Bury Wood was made by Hemel Hempstead Borough Council on 1 October 1968. This was received by the registration authority, Hertfordshire County Council (‘HCC’), on 3 October 1968. The ground for the objection was stated to be that the land had never been acommon and was held for the purpose of the Physical Training and Recreation Act 1937.

***The circumstances in which the provisional registration was cancelled*** 1. The objection from the borough council also contained a copy of a letter, dated 20 February 1968, from BCA, in which it is stated that they had withdrawn their application. However, there is nothing to suggest that HCC were notified of the withdrawal of the application until later in 1968. It is evident that BCA wrote to HCC on 17 November 1968 requesting the cancellation of the registration and the registration was subsequently cancelled on 26 November 1968.
2. The above is supportive of the provisional registration being cancelled in the circumstances provided for by sub-paragraph 5 within paragraph 4 of Schedule 2 to the 2006 Act. The cancellation of the registration followed on from BCA withdrawing their application. I do not find that any weight should be attributed to the cancellation of the registration when determining whether the land can now be viewed as waste land of the manor.

***Whether the land is of a manor***1. The issue to be determined is whether the land is or was formerly connected to a manor. It is not necessary to show that the land continues to be held by the lord of the manor. In this case it is not generally disputed that the land was originally located within a manor. A written account of 1520 is supportive of land in this locality lying within a manor. However, there is some uncertainty regarding which particular manor the land was located within.
2. Overall, the evidence is supportive on balance of the land at Bury Wood originally being of a manor. The additional evidence provided regarding the severing of commons from the manor in 1544 and the later ownership of the land do not prevent the land from now being found to be waste land of the manor if the particular circumstances outlined below are applicable.

***Whether the land is 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”*. Demesneland was land within a manor owned and occupied by the lord of the manor for their own purposes. For land to be occupied there must be some exclusivity of physical use by a tenant or owner alone.
2. The determination of whether land is waste land of the manor should be considered in light of the situation when the application was submitted. Therefore, any previous historical enclosure of the land would not be relevant to whether the land is waste land of the manor. It is accepted that there have been no material changes to the land since the application was made.

*Open*1. The application land largely comprises of trees and other vegetation crossed by a network of paths. It is only enclosed to a limited extent and access is freely available to varying degrees from all sides of the land. Overall, the land can be viewed as being open.

*Uncultivated* 1. The landowner (The Box Moor Trust) refers to the decision of another inspector (case reference: COM/563) where it was found that the management undertaken in relation to an area of land constituted cultivation. Bury Wood is stated to be part of a Higher-Level Stewardship Scheme to provide for low-level, non-intrusive forms of cultivation without chemical enhancement. The land is also subject to a Woodland Management Plan which outlines that the felling, thinning and re-planting of trees has been undertaken.
2. I accept that there may be the potential for management works to be undertaken to such an extent for the land to be considered cultivated. However, whether the works undertaken constitute cultivation will need to be determined with regard to the circumstances in a particular case. There is nothing to suggest that the management in relation to COM/563 was similar in nature to that undertaken at Bury Wood. It is also apparent that an area in the COM/563 case was enclosed to aid with the active management of the land.
3. It is evident that trees are felled as part of the ongoing management of Bury Wood and reference is made to the need to remove trees due to ash dieback. Some wood is sold as firewood, but this appears to be undertaken on a relatively small scale. Deadwood is left where it lies unless it poses a risk to the public. None of the land is enclosed and the management is undertaken to preserve the woodland rather than primarilyas part of a commercial enterprise. Other works are undertaken in relation to the management of the paths that cross the wood rather than for the cultivation of the land.
4. I am not satisfied on balance from the details provided and my observations of the site that the scheme of management undertaken at Bury Wood is sufficient for the land to be viewed as cultivated. It is also noteworthy that the land itself appears to be no different in character to the adjacent registered common land to the north.

*Unoccupied* 1. Occupation requires some physical use of the land to the exclusion of others. This is distinct from the ownership of the land. In this case public access is widely available and indeed encouraged albeit that use appears to be mainly confined to the paths that cross the land. The potential designation of the land as a Suitable Alternative Natural Greenspace does not impact on the unoccupied nature of the land at the present time.

**Other Matters**1. A number of issues have been raised regarding the perceived impacts of Bury Wood being registered as common land. However, I am unable to take these matters into account when reaching my decision. It is also apparent that some of these concerns appear to be unfounded.

**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.

Mark Yates **Inspector** |
| **APPEARANCES**

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| **Supporter:**  |
| Dr F. Kerner  | Applicant  |
| **Objectors:** |
| Mr P. PhillipsMr P. Samson Ms J. RoughMs M. Karger | Chair of Asset Management for the Box Moor TrustEstate Manager for the Box Moor TrustCommercial Manager for the Box Moor Trust |
| **Interested Parties:**Mr R. Cuthbert Ms J. Gough | Hertfordshire County CouncilHertfordshire County Council |

**DOCUMENTS TENDERED AT THE HEARING** 1. Copy of Decision COM/563 of 28 November 2014
2. Woodland Management Plan

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