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| **Application Decision**  Site visit made on 5 December 2023  **by Claire Tregembo BA (Hons) MIPROW**  **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs**  **Decision date: 11 January 2024** |
| Application Ref: COM/3319450 Nesfield Dean Register Unit: CL502 (Original provisional registration number)  Registration Authority: North Yorkshire Council   * The application, dated 9 June 2022, is made under Schedule 2 paragraph 4 of the Commons Act 2006. * The application is made by Frances Kerner of the Open Spaces Society. * 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 carried out an unaccompanied site visit on 5 December 2023. An accompanied site visit was originally planned but the parties withdrew before the start.

# The Application Land

1. The application land is known as Nesfield Dean or Low Green and consists of two areas of land off Gill Lane, Nesfield. The narrow strip of land between these two parcels appears to be a footpath between Gill Lane and a road to the north.

# Main Issues

1. The main issue is whether the land was waste land of manorial origin at the date of the application on 9 June 2022, 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 paragraph 4 to Schedule 2 of the Commons Act 2006.
2. Sub-paragraph (3), on which the applicant relies, provides that land may be added to the register of common land if the provisional registration was referred to a Commons Commissioner under Section 5 of the 1965 Act but the Commissioner determined that, although the land had been waste land of a manor at some earlier time, it was not such land at the time of the determination because it had ceased to be connected with the manor and for that reason only, the Commissioner refused to confirm the provisional registration.

# Reasons

## The requirements of paragraph 4 of Schedule 2

1. The application land was provisionally registered as common land unit CL502 on 17 November 1969 following an application from the Clerk to Nesfield with Langbar Parish Meeting dated 1 July 1968.
2. An objection was raised to the provisional registration of the application land, on 4 August 1970 by Mr Stephen Collins Rawson which was entered into the register on 15 September 1970.
3. A hearing was held by a Commons Commissioner on 11 March 1981. The Commissioner heard evidence that the land was waste of the manor of Nesfield with Langbar. However, as the land had been conveyed by the Lord of the Manor to the Vicar and Churchwardens of Ilkley, the Commissioner found it had been severed from the manor and consequently ceased to be waste land of a manor. The Commissioner refused to register the application land for this and no other reason citing *Box Parish Council v Lacey* [1979] 1 All ER 113 (the Box Hill case) to support their decision.
4. This fulfils the criteria set out in paragraph 4 of Schedule 2 of the 2006 Act.

## Whether the land is waste land of manorial origin

1. It is seldom possible to prove definitively that a particular parcel of land is waste land 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.
2. The definition of waste land of a manor arising from the case of Attorney General v Hanmer [1858] (2 LJ Ch 837) is “*the open, uncultivated and unoccupied 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] 2 ALL ER 257 (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. This case overturned the decision in the BoxHill case.
4. The History and Antiquities of the Deanery of Craven in the County of York, Parish of Ilkley, third edition 1878 records the manor’s descent to the Duke of Devonshire.
5. The Tithe map of 1841 for the township of Nesfield with Langbar shows the application land between two irregular shaped enclosures which the applicant claims are formed when land is taken out of the waste of the manor. The application land is unnumbered. Other land which is registered as common land unit CL502 is also unnumbered and appears to be part of the same parcel as the application land.
6. During the 1981 hearing a title deed was produced by the then owner of the land. It included a Deed Poll dated 2 July 1891 which showed the application land was part of the waste of the Manor of Nesfield and Langbar conveyed by the Lord of the Manor to the Vicar and Churchwardens of the Parish of Ilkley.
7. Having regard to the above, the evidence of the land being of manorial origin is persuasive and no evidence has been put forward to contradict it. I consider that the evidence is sufficient, on the balance of probabilities, to show that the application land is waste land of manorial origin.

## Whether the land fulfils the character of waste land of manorial origin

1. The question as to whether the land is waste land of manorial origin is one which must be satisfied at the date of the application on 9 June 2022. Having regard to the definition of waste land of a manor in paragraph 11, I must now consider the character of the application land.

*Open*

1. Generally, ‘open’ in this context means unenclosed. There is a short length of wall and hedge with a pedestrian gate at the north-western corner of the site alongside Gill Lane. It is not clear what the origins and purpose of it are. The other side of the wall can be reached by walking around it. The gate is not locked, although earth behind it prevented it from being opened. In my view, this wall does not enclose any part of the application land.
2. The rest of the application land is open to the highway verge alongside Gill Lane which is registered common. It is also open to the path between the two parcels of the application land and an area of grassland to the north.
3. There are walls along the north-western and eastern boundaries of the application land. However, the purpose of these appears to be to enclose the adjacent properties rather than the application land. Photographs submitted with the application indicate the land has not changed since the application was made.
4. Overall, it is my view that the application land was ‘open’ at the date of the application.

*Uncultivated*

1. There is no officially accepted definition of what constitutes cultivation for the purpose of the 2006 Act. Therefore, it is necessary to consider each case individually and assess the degree of cultivation that has taken place.
2. The grass is mown, but this appears to be for amenity purposes. The landowner advises she looks after the land so it is ‘in keeping’ with the hamlet of Nesfield. In *R v Doncaster Metropolitan District Council Ex p. Briam* [1986]57 P. & C.R. mowing which was not for the purpose of gathering a crop was not considered to be cultivation.
3. It is my view that it is reasonable to describe the land as uncultivated for the purpose of the 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. The landowner considers the land to be occupied because she owns and maintains it. However, there is no evidence that the land is managed to the exclusion of others and it appears to be managed in the same way as nearby registered common land.
2. The landowner states that the villagers wish the land to remain as it is, an open tended space in the heart of the village. This suggests it is available to, and used by villagers who are not excluded from it. Therefore, it is my view that the land was unoccupied at the time of the application.

## Conclusion on whether the land fulfils the character of waste land of manorial origin

1. Considering the evidence as a whole, at the time of the application, the application land can be described as open, uncultivated, and unoccupied. Therefore, the application land fulfils the character of waste land of manorial origin.

**Other Matters**

1. The landowner purchased the land to ensure it is not built on. They and other villagers want it to remain as an open tended space. Land recorded in the Commons Register requires permission for any works to be undertaken to ensure the stock of Commons is retained. The registering of the application land as common land would protect it for future generations.
2. An adjoining landowner objected because they do not want the land to be used by anyone who chooses. However, this is not relevant to the statutory tests outlined above.

# Overall Conclusion

1. Having regard to these and all other matters raised in the written representations, I conclude that the application land fulfils the necessary criteria for registration and consequently I approve the application.

Claire Tregembo

INSPECTOR

**Application Plan**

