

**Application Decision**

Hearing held on 8 August 2023

**by Claire Tregembo BA (Hons) MIPROW**

**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:** 23 January 2024

# Application Ref: COM/3309826 Talland Cliff

Register Unit: CL544 (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 application is made by Tomas 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 not approved, and the land shown on the plan attached to this decision shall not be added to the commons register.

**Preliminary matters**

1. I held a hearing at Chy Trevail on 8 August 2023. This was a hybrid event with a landowner appearing online via Teams and other parties appearing in person.
2. I carried out an unaccompanied site visit on 4 August 2023. I was able to view the application site from the South West Coast Path and walk along paths within some parts of it. Much of the cliff top was overgrown with steep slopes and drops which meant I could not access these areas.
3. The 2020 application included land to the north of Dinas Bal. This land had been enclosed to form a private garden before the 2020 application. The applicant asked to withdraw this land and Cornwall Council approved this withdrawal in 2022. A revised plan was produced which showed the new extent of the application land which had more detail than the 2020 application plan. All parties agreed that the extent of the application land is as shown on the plan labelled SX2251.

# The Application Land

1. The application land is known as Talland Cliff and consists of four parcels of land between Polperro and Talland Bay. The land is a mix of cliffs, cliff tops, rocky outcrops, and beaches with an area of 14.72 hectares.

# Main Issues

1. The main issue is whether the land was waste land of manorial origin at the date of the application on 22 December 2020 and whether before 1 October 2008:
   1. the land was provisionally registered as common land under section 4 of the Commons Act 1965;
   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.
2. Sub-paragraph (5), on which the applicant relies, requires the person who made the application for provisional registration to request or agree to its cancellation (whether before or after its referral to a Commons Commissioner)

# Reasons

## The requirements of paragraph 4 of Schedule 2

1. The land was provisionally registered as common land unit CL544 on 1 April 1970 following an application from Mrs Aileen Joan Teal dated 30 December 1969.
2. Three objections were raised to the provisional registration of CL544. The objections were made by Mr. and Mrs. R. M. Pearce on 21 January 1972, The National Trust on 14 June 1972 and Mary Elizabeth Hutchings on 28 June 1972.
3. Entry 2 in the Register of Common Land (RCL) dated 6 March 1973, records that the provisional registration was cancelled under Regulation 8 of the Commons Registration (Objections and Maps) Regulations, 1968. This permitted the Commons Registration Authority to cancel or modify a registration to which objections were made, at the request of the applicant. The RCL sets out that the land was removed pursuant to an application dated 1 October 1972 made by Mrs Aileen Joan Teal.
4. 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. It is seldom possible to prove definitively that a particular parcel of land is of a manor. But it is sufficient to show, 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.
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*”. 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 there must be some exclusivity of physical use by a tenant or owner alone.

*The views of the relevant parties*

1. The applicant considered the land to be within the Manor of Killigarth, although the eastern end may lie in the Manor of Trelwaney. Therefore, if the land met the tests of being open, uncultivated, and unoccupied at the time of his 2020 Application, it was waste land, and if it was of manorial origin, it could be registered.
2. The landowners referred to historical documents which identified the land as demesne land, not waste land and therefore was not capable of being registered as common land under Schedule 2 paragraph 4 of the 2006 Act. They considered demesne land could not become waste land and cited various cases.
3. In response the applicant cited ‘The Law of the Manor’ 2nd Edition by Jessel which states land can change category, meaning demesne land could become waste land and vice versa.
4. The definition in *Hanmer* above indicates waste land of a manor did not include demesne land. Therefore, in my view, I need to consider if the land was ever ‘waste land of a manor’, or if it was always ‘demesne land of a manor’.

*Documentary evidence*

1. The Parliamentary Survey of 1649/50 describes the Manor of Killigarth as bounded on the west side by a brook called Long Commbe, on the south by the sea and the north and northeast by the lands of Sir John Trelawney Kt. and on the east by a little brook that runs to the sea. The Survey also states the Manor of Killigarth was then in the possession of the Crown, having been seized on account of the debts of its former owner, Sir James Baggs. Within the Survey, under the title *‘“DEMEASNES LAND” BELONGING TO THE SAID MANSION HOUSE’* are pieces of arable land called Sandhill (37 acres) and The Warren (35 acres), *‘heretofore used as a cony warren’*. The Parliamentary Survey does not identify any waste land within the Manor of Killigarth.
2. A plan of the Manor of Killigarth circa 1860 shows the extent of the manor matching the description in the Parliamentary Survey. It shows the eastern section of the beach at Talland Bay in the Manor of Trelwaney, although there may have been a change in the alignment of the brook between 1650 and 1860. The Manor of Trelawney is also recorded in the Manorial Documents Register.
3. On the Talland Tithe map of 1804 parcel 306 is named Talland Sands Hill with an area of 34 acres, 0 roods and 13 perches of arable land. Parcel 284 is named The Warren with an area of 36 acres, 3 roods and 15 perches of pasture. Both parcels were owned by Nicholas Kendall and occupied by John A. Lee. These parcels make up most of the application land. The cliffs and rocky outcrops to the southeast of parcel 306 Talland Sands Hill and Talland Sands beaches are not allocated parcel numbers on the Tithe map. The area shown in the Tithe map for Talland Sands Hill is less than stated in the Parliamentary Survey which is likely to account for the difference in the overall area between the Tithe map and the Parliamentary survey.
4. The National Trust own the land known as The Warren and has examined their title documents. This land was once owned by Gwladys Enriqueta Mills who sold the land in the 1920s. The Abstract of Title dated 1923 refers to it as ‘hereditaments known as The Warren, Killigarth’. It recites that the root of the title was a Deed of Partition dated 14 March 1879. The Abstract for the 1879 Deed recites the land conveyed as *‘all that the Capital messuage barton and farm called Killigarth… together with so much of the demesne lands fields or closes of land and premises thereto belonging and then in the occupation of John Gundry as Tenant thereof’*. An extract from a schedule of land refers to the land as Warren being No. 284 on the Plan of the Manor of Killigarth with an area of 36 acres, 3 roods and 15 perches. The National Trust does not have a copy of the plan, but the parcel number, name, and area match the details in the Talland Tithe map.

*Conclusions on whether the land is waste of a manor*

1. The documentary evidence indicates the application land was demesne land at the time of the Parliamentary Survey in February 1649/50 and there was no waste land within the Manor of Killigarth. The Tithe map indicates Talland Sands Hill was arable land in 1804 and therefore was not waste land at this time. The Deed of Partition dated 14 March 1879 indicates The Warren land was still demesne land in 1879 with a tenant. The Parliamentary Survey indicates the Manor was bounded by the sea so would include the cliffs, rocky outcrops, and beaches.
2. The applicant considered The Warren ceased to be a cony warren, and therefore demesne land, approximately 400 years ago because the Parliamentary Survey states, *‘heretofore used as a cony warren’*. This would suggest it was no longer used as a cony warren but, in my opinion, this does not mean it was no longer demesne land. The Abstract of the 1879 deed indicates it was still demesne land when it was partitioned.
3. Having regard to the above, the evidence before me suggests the application land was demesne land of Killigarth Manor and was never waste land of a manor. Therefore, on the balance of probabilities, I do not consider the application land to be waste land of a manor.

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

1. As I have found that the application land was not waste land of a manor I do not need to consider if the land fulfils the character of waste land.

# 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 does not fulfil the necessary criteria for registration and consequently I do not approve the application.

Claire Tregembo

INSPECTOR

**APPEARANCES**

**The Applicant**

Tomas Hill Applicant

**For the Commons Registration Authority**

Martin Wright Commons Registration Officer, Cornwall Council

**Interested Parties**

James Allsopp Landowner (online)

**DOCUMENTS (submitted at the Hearing)**

Colour copies of the Tithe Map with and without the public rights of way added

**Application Land**

**Plan referred to in Paragraph 4
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