

**Application Decision**

Hearing held on 3 August 2023

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

**An Inspector appointed by the Secretary of State for Environment Food and Rural Affairs**

**Decision date: 12 February 2024**

**Application Ref: COM/3314044 Breakneck, Peter’s Splash and Raven’s Hole Beaches, south of Porthscatho, Gerrans, Cornwall**

Register Unit: CL343 (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 approved for the two islands shown outlined and hatched blue on the plan appended to this decision. The application is not approved for the rest of the application land, and the remaining land outlined in red on the plan shall not be added to the commons register.

**Preliminary matters**

1. I held a hearing at New County Hall, Truro on 3 August 2023. I carried out an unaccompanied site visit on 31 July 2023. As the tide was out, I was able to walk the application site gaining access from two paths down the cliffs. I also viewed it from above from the King Charles III England Coast Path (previously the South West Coast Path).
2. The Chair of Gerrans Parish Council advised that Peter’s Splash was known locally and historically as Petersplosh. I will refer to it as Peter’s Splash as shown on the Ordnance Survey maps.

# The Application Land

1. The application land is known as Breakneck, Peter’s Splash and Raven’s Hole Beaches and consists of foreshore made up of beaches and rocks situated between the mean low and high water marks. The King Charles III England Coast Path runs along the top of the cliffs to the west of the application site.

# Main Issues

1. The main issue is whether the land is waste land of manorial origin at the time of the application 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.
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 CL343 on 23 October 1968 following an application from Gerrans Parish Council dated 16 June 1968.
2. Objections were raised to the provisional registration of CL343, on 27 May 1970 by His Royal Highness Charles, Prince of Wales, Duke of Cornwall and on 26 July 1972 by the Right Honourable George Hugh Viscount Falmouth, Tregothnan.
3. Entry 2 in the Register of Common Land (RCL) dated 17 July 1973, records 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 an objection was made at the request of the applicant. The RCL states the land was removed pursuant to an application dated 8 July 1973 made by Gerrans Parish Council.
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 manorial origin. 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 (*Hanmer*) 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 considers the application site lies within the Manor of Tregeare and the Manor of Rosteague and the Manor of Treloan were formed out of the Manor of Tregeare. In the book Gerrans Through the Ages: A Parish History for the Millennium, it states ‘the present day farm at Tregeare, lying strategically on the high ground between river and sea was once the hub of a wealthy manor, held by the Bishop of Exeter before the Norman Conquest, which extended to include the parishes of Gerrans… Between Doomsday and the Reformation (mid-1500s), much of the manor passed into lay hands, but the farm remained in the possession of the Church until the middle of the twentieth century.’
2. Treloan and Rosteague are included in the list of manors and farmland which passed to individual landlords. Treloan is stated to have passed from the Norman Pomeroy’s of Tregony Castle to the Cornish family of Boscawen who still own the land.
3. Rosteague was owned by Ralph de Restak in the 13th century. By the 16th century, it was owned by the Petits but was then confiscated by Henry VIII in response to the treason of Winslade. It passed to various owners until 1894 when it transferred to the Van Grutten’s. They sold portions of the Rosteague Estate at auction in 1920 but no manorial rights were included in the sale. A 2003 sales brochure for Rosteague describes it as a historic and substantial Manor House of 187.76 acres including nearly 52 acres of coastal slope and foreshore with over 1 mile of water frontage.
4. The applicant considers that beaches and foreshores meet the definition of waste of the manor as set out in *Hanmer* because it is ‘open, uncultivated and unoccupied’. They refer to Halsbury’s Laws of England which state that the extent of the manor ‘may include the foreshore of the sea’.
5. The objectors consider there is no evidence to show the application land is part of a manor. They advise that the Tregothnan Estate has been owned by the Boscawen family for 600 years. Breakneck and Peter’s Splash beaches are owned by the Duchy of Cornwall. The Duchy owned additional foreshore including Raven’s Hole Beach until they sold it to the Van Grutten’s in 1902. They refer to the prerogative right that the Crown is prima facie the owner of the foreshore or land between the high and low water mark. They claim Duchy has never owned the Manor of Tregeare and there is no evidence that the foreshore was ever part of a Manor.
6. They state the foreshore around Cornwall was conferred by Royal Charter in 1337 and this could not have been done if it had already been gifted to manors. Later acquisitions of manors in 1421 would not impact the land originally conferred. The division and selling of the Manor of Tregeare is claimed to have not started until the 13th century after the Duchy was created.
7. The objectors cite *The Duke of Beaufort v Mayor Alderman and Burgesses of Swansea* [1849] ER 413, 154 ER 905 (*Beaufort)* which found the bounds of a manor do not typically include the land between the high and low water mark.
8. Reference is made to a local history book, The Roseland between River and Sea by Laurence O’Toole which observed the Lords of the Manor of Rosteague once held profitable rights to wreck along the shore of the application land. At common law, the Crown is entitled to all unclaimed wrecks, except in places where the right has been granted to any other person. In the County of Cornwall, the rights of wreck belong to either the Duke of Cornwall or to a subject, except where it may have escheated (reverted to) or become vested in the Crown by purchase.
9. The objectors consider the right to wreck could only be expressly granted by the Crown and does not attach to the land citing *Scratton v Brown* [1825] 4 B & C 485. Therefore, this is evidence that the foreshore is not of a manor and is of royal demesne. It was not a manorial right and would have been exercised aside from any manorial rights.

*Findings*

1. It is generally accepted that the Royal Charter of 1337 granted the foreshore around Cornwall to the Duke of Cornwall. This does not preclude it from being of manorial origin and cases cited, including *Beaufort*, indicate manorial land can be part of the foreshore of the adjoining manor and could be granted by express words. Halsbury’s Laws also states the Crown had probably parted with the Cornish foreshore by the time of the Royal Charter. In *Le Stange v Rowe* (1052) Erle CJ said, ‘in a great number of cases the Crown has parted with the foreshore… in the great majority of cases the right to the foreshore between high and low water mark is in the Lord of the Manor’.
2. The Duchy has not provided any evidence of their landholdings to show how the foreshore was acquired. If it was granted under the Royal Charter, it would not have been part of a manor before 1337. Most of the application land is either in their ownership or was in their ownership until they sold it in 1902.
3. Rosteague Manor passed into the ownership of the Van Grutten’s in 1894 but the application land was sold to them by the Duchy in 1902 indicating it was a later acquisition and not part of the manor. The Lords of Rosteague Manor once had the right of wreck along the coastline, but *Sir Henry Constable’s case* [1616] 5 Rep. 107 indicate this right is separate from a manor and does not attach to the land.
4. The Viscount of Falmouth (The Honourable Boscawen) owns two small islands within the application land. They also own the clifftop and beaches above the high water mark to the west of the application land which were part of the Manor of Tregeare. An island which arises from tidal waters prima facie belongs to the Crown unless the site of the island has been granted to or belongs to a subject. The Boscawen’s have owned the Manor of Tregeare for the last 600 years and, apart from two islands above the high water mark, the application land is not owned by them. This would suggest the islands were granted with the manor, but the foreshore was not.
5. None of the evidence provided describes the manors in sufficient detail to indicate if they included the foreshore. The book Gerrans Through the Ages refers to the Manor of Tregeare as lying on ‘high ground between the river and the sea’ suggesting it was only the land at the top of the cliff and did not include the foreshore. Only the 2003 sales brochure refers to the foreshore within Rosteague Manor, but this land was purchased from the Duchy in 1902 so does not appear to be part of the manor.
6. Having regard to the above, I consider the evidence is not sufficient, on the balance of probabilities, to show that most of the application land is waste land of a manor.
7. However, the evidence suggests the two islands within the ownership of the Viscount of Falmouth were granted to the Boscawen’s with the rest of the Manor. In *Hanmer*,Watson B found the word waste is sufficient to describe the foreshore and land between high and low water marks, it being ‘open, desolate, unoccupied, uncultivated’. Therefore, I consider there is sufficient evidence, on the balance of probabilities, to show these two islands are waste land of a manor.

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

1. The question as to whether the land is waste land of a manor is one which must be satisfied at the date of the application on 22 December 2020. Having regard to the definition of waste land of a manor in paragraph 12, I must now consider the character of the two islands owned by the Viscount of Falmouth.
2. Generally, ‘open’ in this context means unenclosed. The islands are surrounded by the sea at high tide but are otherwise unenclosed. I do not consider the sea to be an enclosure. Overall, it is my view that the application land was ‘open’ at the date of the application.
3. On my site visit I saw no indication of cultivation. There is no officially accepted definition of what constitutes cultivation for the purposes of the 2006 Act, therefore it is necessary to consider each case individually and assess the degree of cultivation that has taken place. The objectors consider the land must be capable of being cultivated to be described as uncultivated and the islands are not capable of cultivation because they are rock. I do not share this view and consider it reasonable to describe the islands as uncultivated for the purpose of the 2006 Act.
4. 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 any of the application land is managed to the exclusion of others. Steps are available to access the beaches and foreshore which can be walked across to reach the island at low tide. Therefore, I consider the islands to be unoccupied.
5. The objectors consider the application land could not be used for any rights of common such as pasturages, pannage or estovers. Therefore, it does not meet the definition of waste land of a manor as defined by Section 37 of the Commons Act 1876. However, under Section 22(1) of the 1965 Act, common land which could be registered included ‘waste land of a manor not subject to rights of common’.
6. Considering the evidence as a whole, at the time of the application, the islands can be described as open, uncultivated, and unoccupied. Therefore, they fulfil the character of waste of a manor.

**Other Matters**

1. Several matters were raised in relation to the impact of registering land as common land. However, these issues are not relevant to the statutory tests outlined above.
2. It is suggested there is no right of access to the islands which I consider should be recorded as common land. However, the matter for me to determine is if the application land meets the requirements to be registered as common. It is not before me to determine how the common is accessed.
3. Decisions by other Inspectors are referred to by the parties. Some of these decisions concerned foreshore, which was found to waste land of a manor, including a case where the Duchy of Cornwall owned the application land. However, I can only make my decision based on the evidence before me which indicates most of the application land is not of manorial origin and was Crown land.

# Conclusion

1. Having regard to these and all other matters raised at the Hearing and in the written representations I conclude that the two islands within the ownership of the Viscount of Falmouth fulfil the necessary criteria for registration and should be added to the commons register. I have outlined and hatched these islands in blue on the plan appended to this decision.
2. Having regard to these and all other matters raised at the Hearing and in the written representations, I conclude the rest of the application land does not fulfil the necessary criteria for registration and the remaining land outlined in red on the plan attached to this decision should not be added to the commons register.

Claire Tregembo

INSPECTOR

**APPEARANCES**

**The Applicant:**

Tomas Hill Applicant

**The Objectors:**

Richard Bagwell Stephen Scown LLP for Mr Milton and the Viscount of Falmouth

Howard Milton Landowner

**Interested Parties:**

Kate Greet Chair of Gerrans Parish Council

Toby Wright

**DOCUMENTS (submitted at the Hearing)**

A3 Copy of the Land Registry Map Search Snapshot

A3 Copy of the Application map

Extract from Rocks, Coves & Fishing Marks Nare Head to Zone by Hillary Thompson Pg. 12 to 15

Extract from The Roseland Between River and Sea by Laurence O’Tool showing Charles Henderson’s map and notes of the Manor of Tregeare

Extract from A History of The Parish of Gerrans 1800-1914 Part 1 Farms and Farmers by Hilary Thompson Pg. 1-3, 16, 17, 78, and 79

Photographs and comments about access to the beach from Toby Wright

Extract from Cornwall Beach Information website

Extracts Halsbury’s Laws of England relating to islands in tidal waters (Volume 100, paragraph 120) and public rights in tidal waters (Volume 100, paragraph 119)

**Application Plan**

**Plan referred to in Paragraph 1
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