

**Application Decision**

Site visit made on 12 June 2024

**by Charlotte Ditchburn BSc (Hons) MIPROW**

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

**Decision date:** 12 August 2024

# Application Ref: COM/3336779 Burngullow Common

Register Unit: CL409 (Original provisional registration number)

Registration Authority: Cornwall Council

* The application, dated 30 December 2020, is made under paragraph 4 of Schedule 2, of the Commons Act 2006.
* The application is made by Mr Tomas Hill on behalf 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 in part, and the land shown coloured blue on the plan appended to this decision shall be added to the commons register. The land hatched black shall not be added.

**Preliminary matters**

1. I carried out an unaccompanied site visit on 12 June 2024.
2. Although the original application stated the application land was in the Manor of Burngullow, the applicant has since provided documentary evidence showing that the application land is claimed to be within the Manor of Trewoon.

# The Application Land

1. The application land is known as Burngullow Common and consists of a parcel of land adjacent to a registered parcel of common land within the parish of St. Mewan. It includes the road, the roadside verge and land to the east and west side of the road. The application land and the registered common land on either side were all part of the same application in 1968.

# Main Issues

1. The main issue is whether the land was waste land of a manor, at the date of the application on 30 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 (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 (the 2006 Act).
2. Sub-paragraph (5), on which the applicant relies, requires the person who made the application for the 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 application land was provisionally registered as common land unit CL409 on 21 November 1968 following an application from St. Mewan Parish Council dated 26 June 1968.
2. An objection was raised to the provisional registration of this parcel of CL409, on 28 September 1970 by English Clays Lovering Pochin & Co Ltd (objection reference X457). Other objections for parcel CL409 were also received in March 1971.
3. Entry 2 in the Register of Common Land (RCL) dated 2 October 1973, records that the provisional registration was modified under Regulation 8 of the Commons Registration (Objections and Maps) Regulations, 1968.
4. 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 26 June 1968 made by the St. Mewan Parish Council.
5. This fulfils the criteria set out in paragraph 4 of Schedule 2 of 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 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 application land is shown on St. Mewan Tithe map as part of parcel 1538. The Tithe apportionment records it as ‘Trewoon Common’.
3. Cornwall Council has objected to the application but has not provided evidence to contest that the land is not waste land of a manor.
4. Having regard to the above, I consider the evidence sufficient, on the balance of probabilities, to show the application land is of the Manor of Trewoon.

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

1. 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*”.
2. The question as to whether land is waste land of the manor is one which must be satisfied at the date of the application on 30 December 2020.

*Open*

1. Generally, ‘open’ in this context means unenclosed. At the time of my site visit, the land was open on both sides of the road running through it. There were fences to the north and northwest boundaries of the application land, but they appeared to be for the purpose of enclosing the adjacent land rather than the application land. There was a fence on the west boundary between the application land and the registered common land to the west. Photographs from Google Streetview provided with the application indicate this was also the case in 2011 and that the situation had not changed at the date of application.
2. The land is only bounded on two sides, this fencing enclosing adjacent land rather than the application land. Overall, it is my view that the application land was ‘open’ at the date of the application.

*Uncultivated*

1. During 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. Therefore, it is 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 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 lawful use of the land.
2. There is no evidence that the land is managed to the exclusion of others. Accordingly, I would describe the land as unoccupied.

***Conclusions***

1. Taking into account the evidence as a whole, the application land can be described as open, uncultivated and unoccupied. Therefore, the application land fulfils the character of waste of the manor.

**Other Relevant Matters**

1. Cornwall Highways objected to the inclusion of the public highway. They considered land that formed part of a highway was not defined as common land under Section 22 of the 1965 Act. As the intention of the current application was to correct mistakes made when commons were registered under the 1965 Act it would not make sense for highway land to be registered under the 2006 Act.
2. The applicant referred to *Peardon v Underhill* [1850](S.C.20 L.J.Q.B.133)which found common pasture in a waste included land which the cattle may wander over in search of food, even though there may not be food on the spot itself. They also referred to the Commons Commissioners’ decision in the matter of Flaxton Village Green and Common Land where the Commissioner found a tarmacadam strip should be included in the common based on the above decision. They considered the metalling and subsequent tarring of a road across waste of the manor does not mean it ceases to be waste or common providing it remains open, uncultivated, and unoccupied.
3. The 1965 Act establishes a definition of Common Land at section 22(1). This states: “*In this Act, unless the context otherwise requires,- Interpretation. ‘common land’ means- (a) land subject to rights of common (as defined in this Act) whether those rights are exercisable at all times or only during limited periods ; (b) waste land of a manor not subject to rights of common ; but does not include a town or village green or any land which forms part of a highway*”. I agree with the Council and consider that as a vehicular highway it is not appropriate to register it as common land. Therefore, I consider the metalled highway should be removed from the application and should not be registered as common.

# Conclusion

1. Having regard to these and all other matters raised in the written representations I conclude that the application land in part fulfils the necessary criteria for registration. Consequently, I approve the application in part and the land shown coloured blue on the plan appended to this decision should be added to the commons register. The metalled highway hatched black has been removed and should not be added.

Charlotte Ditchburn

INSPECTOR

**Application Plan**

Plan referred to in Paragraph 1
