

**Application Decision**

Hearing held on 11 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/3330832 Rejerrah Downs

Register Unit: CL606 (Original provisional registration number)

Registration Authority: Cornwall Council

* The application, dated 24 December 2020, is made under paragraph 4 of Schedule 2, of the Commons Act 2006.
* The application is made by 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, and the land shown coloured pink on the plan appended to this decision shall be added to the commons register.

**Preliminary matters**

1. I held a hearing at County Hall Truro on 11 June 2024. I carried out an unaccompanied site visit on 10 June 2024 and a further unaccompanied site visit following the hearing on the 11 June 2024.
2. There were 3 objectors to the application, Mr Miller appeared at the hearing, but Mr and Mrs Bartram did not make appearances.

# The Application Land

1. The application land is known as Rejerrah Downs and consists of a parcel of land bordering a parcel of common land adjacent to Willow Cottage, St. Newlyn East. The application land and the registered common were part of the same application in 1969.

# Main Issues

1. The main issue is whether the land was waste land of a manor, at the date of the application on 24 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 CL606 on 24 February 1970 following an application from the Ramblers’ Association dated 31 December 1969.
2. Two objections were raised to the provisional registration, one of these was made for a section of CL606 not subject to this application. The other was made on 21 April 1971 by Peter John Miller and Rosalind Mavis Miller (objection reference X825) which relates to the application land.
3. Entry 2 in the Register of Common Land (RCL) dated 18 September 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 23 May 1973 made by the Ramblers’ Association.
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.

*The views of the relevant parties*

1. The applicant considered the land to be within the Manor of Cargoll. 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. In response the objector conceded that the land may have been affiliated with a manor at one time but went on to cite deeds dating back to 1920, asserting that the application land could not be regarded as waste land of the manor at present due to previous and current ownership. I appreciate the point being made by the objector, but I need to consider whether the land was located within a manor in the past. The evidence regarding the later ownership of the land does not prevent the land from now being found to be waste land of the manor if the particular circumstances outlined below are applicable.

*Documentary evidence*

1. On the St. Newlyn East Tithe map the application land is shown within one parcel of land numbered 1503, the Tithe apportionment records it as ‘Rejerrah Downs’ listed as ‘Common’. The objector claimed that there was a discrepancy with the Tithe apportionment claiming that something had been deleted but provided no evidence of this nor any further explanation of the reason for the claimed discrepancy.
2. 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 of manorial origin.

## 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 24 December 2020.

*Documentary evidence*

1. I heard views from both parties regarding the 1879 Ordnance Survey (OS) map. The map shows an open boundary to the north, depicted by a broken boundary line, with the vegetation type shown as ‘moor’. Whilst OS maps do not provide evidence of the status of the land, nevertheless, this map provides a picture of how the application land was managed, which appears to be in the same manner as at the time of the application and at the time of my site visits.

*Open*

1. Generally, ‘open’ in this context means unenclosed. At the time of my site visit there was a fence along the west boundary of the application land, but this appeared to be for the purpose of enclosing the adjacent land rather than the application land. Photographs submitted with the application indicate the land has not changed since the application was made.
2. The land largely comprises of overgrown vegetation, the objector asserts that this is a conscious management strategy. I conclude that having seen adjacent land, owned by the same landowner having been fenced, it is clear that the application land was intentionally unenclosed.
3. The objector asserted that there was a pond within the application land which he said was fenced around in part, but stated it was not fully enclosed as to allow cattle to use the pond for drinking water. From the evidence and from visiting the site before and after the hearing I am satisfied of the location of the pond. I do not consider this section within the application land to be enclosed to exclude others, only to prevent cattle from entering part of the pond. The applicant submitted aerial photographs from 1947 – 2022 and current digital Ordnance Survey mapping which do not show the pond. The photographs submitted by the objector do not show a fully fenced area nor a pond. From the evidence submitted and my site visits I am satisfied that the area of alleged pond is de minimis. There is no reason why a pond cannot be recorded as part of the common and I am satisfied that this area should not be excluded from the consented area, as it can be reasonably viewed as part of that area.
4. Overall, it is my view that the application land was ‘open’ at the date of the application.

*Uncultivated*

1. At the time of my visit, the land was overgrown with natural vegetation such as brambles and the application photographs indicate it was in the same state at that time. There is no 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 objector claimed that the application land was intentionally overgrown due to previous management as part of an agri-environment scheme. It seems that the objector believes that the scheme requires that the land be ‘uncultivated’ in order for payments to be made. The objector stated that they had carried on this management style even though the land was no longer part of any agri-environment scheme.
3. The applicant considered the application land to be uncultivated as the application land was overgrown with natural vegetation. One of the objectors verified that this has been the case for some time, stating that the land was untouched natural habitat which had taken 33 years to encourage all the wildlife and habitat that live and breed on the land, confirming that no cultivation had taken place.
4. The objector provided a grazing licence as evidence of cultivation and highlighted the original objection to the registration by his father stating intention to sow corn. These show evidence of intention; however, the objector provided no further evidence that the land was grazed or sown with corn at any point. In Part 1 of the Commons Act 2006: Guidance to commons registration authorities and the Planning Inspectorate paragraph 7.3.14 the Department of Environment Food & Rural Affairs (DEFRA) does not consider that grazing land of manorial origin means that the land will have ceased to be waste land merely because there is provision for grazing the land contained in a tenancy agreement.
5. The objector also provided two aerial photographs showing the application land, claiming to show cultivation. The photographs submitted showing the land at the time of the application show it is uncultivated and having viewed the land myself I am satisfied that the land is of uncultivated appearance.
6. As the land was overgrown with natural vegetation, I consider no cultivation of the land has occurred. Therefore, it is reasonable to describe the land as uncultivated for the purposes 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. This is distinct from the ownership of the land.
2. On the issue of ‘unoccupied’ DEFRA’s guidance (Part 1 of the Commons Act 2006: Guidance to commons registration authorities and the Planning Inspectorate) paragraph 7.3.14 sets out that “*land does not cease to be unoccupied (and therefore cease to be waste) merely because it is subject to a tenancy, lease or licence whose sole or principal purpose is to enable the land to be extensively grazed. Occupation requires some physical use of the land to the exclusion of others: such might occur if the land were occupied by a quarry, or were improved by a tenant (e.g. by cultivating and reseeding moorland) for his own exclusive use and benefit…*”.
3. The objector claimed that the vegetation overgrowth was deliberate to exclude people from the land. I heard from the applicant that the land is open including against registered common land and that it was their view that the land could be walked upon (albeit trespass) without hinderance other than the dense patches of vegetation throughout the land.
4. Taking account of all of the evidence, I consider that is has not been demonstrated that the land has been cultivated. It remains outside the fenced and actively managed area and so I am satisfied that this land is ‘unoccupied’.

***Conclusions***

1. Pulling all of this together and having considered all of the written and verbal evidence, there is nothing before me of any significance that weighs against the case put forward with the application. Accordingly, on the balance of probabilities, I find that the application land was waste land of a manor at the time the application was made.

**Other Matters**

1. Taking account of all of the evidence, I consider that is has not been demonstrated that the land has been cultivated. It remains outside the fenced and actively managed area and so I am satisfied that this land is ‘unoccupied’.
2. I heard from the applicant about the Definitive Map Modification Order (reference WCA605) which is yet to be determined, the route runs along the eastern side of CL606. This is not a matter relevant to my determination of this application. Objectors raised concerns in respect of the land ownership of the application land providing conveyance documents and tenancy agreements in their evidence. This is not a matter relevant to my determination of this application.
3. Comments from the objector suggest they understand the application would remove the boundary hedge from private ownership. This is not the case; the registration of common land does not alter ownership.
4. Several matters were raised in relation to the impact of the land being registered as common land. However, these issues were not relevant to the statutory tests outlined above.

# 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. Consequently, I approve the application and the land shown coloured pink on the plan appended to this decision should be added to the commons register.

Charlotte Ditchburn

INSPECTOR

**APPEARANCES**

**The Applicant**

Tomas Hill Open Spaces Society

**Objector**

William Miller Landowner

**Application Plan**

Plan referred to in Paragraph 1
