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| **Application Decision** |
| Hearing held on 18 June 2024  Site Visit conducted on 18 June 2024 |
| **by Rory Cridland LLB (Hons) PG Dip, Solicitor** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 15 August 2024** |

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| **Application Ref: COM/3321045**  **West Looe Downs**  Register Unit No: CL338  Commons Registration Authority: Cornwall Council |
| * The application, dated 24 December 2020 is made under Schedule 2, paragraph 4 of the Commons Act 2006 (“the 2006 Act”). * The application is made by Tomas D.J.S Hill * The application is to register waste land of a manor as common land in the register of common land,  |  | | --- | |  | |
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Decision

1. The application is approved in part and the application land (excluding the Car Park) shall be added to the commons register.
2. The application land is shown edged green on the plan attached at Schedule 1. The area of land forming the Car Park (referred to in paragraph 1 above) is shown for illustrative purposes hatched red.

**Preliminary Matters**

1. I held a hearing at West Looe on 18 June 2024. Prior to the hearing, additional documentary evidence was submitted by the Applicant in support of its case that the land was of manorial origin. It was explained at the hearing that it had only recently come to light. In view of the fact that the manorial origin of the land is not disputed, I have taken it into account in reaching my conclusions below.

**The Application Land**

1. The application land is known as West Looe Downs and consists of an area of around 14 acres of land located in West Looe (“the application land”). It is common ground that the land is used by local residents and members of the public for a variety of recreational activities.

**Main Issue**

1. The main issue is whether the land was waste land of a manor 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 under register unit CL338 on 10 October 1968 following an application from Looe Urban District Council dated 20 June 1968.
2. One objection was made by Looe Urban District Council dated 20 April 1972.
3. Entry 2 in the Register of Common Land for CL338 dated 12 September 1972 notes that the provisional registration was cancelled under Regulation 8 of the Commons Registration (Objections and Maps) Regulations 1968 pursuant to an application dated 23 May 1972 made by Looe Urban District Council.
4. The Objector (the West Looe Town Trust) confirmed at the hearing that it did not object to the application on the basis that it failed to meet the criteria of paragraph 4(5) of Schedule 2 to the 2006 Act. I have no reason to conclude otherwise.
5. Overall, I am satisfied that the application land meets the criteria set out in paragraphs 5(a) – (c) above.

**Whether the land is waste land of a manor**

1. The Applicant considers the land formed part of the manor of Portlooe. No historic plans have been provided which would clearly tie the application land to a manor and much of the evidence is based on incomplete records.
2. However, as is made clear in Defra’s guidance on Part 1 of the Commons Act 2006 (December 2014) (“the 2014 Guidance”), it is seldom possible to prove definitively that a particular parcel of land is of a manor. Instead, it makes clear that 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.
3. The Parliamentary Survey of the Duchy of Cornwall Part I, published in 1982, contains references to the Manor of Portlooe describing the borough of Portpigham as lying ‘within the Parish of Talland and formerly part of the manor of Portlooe’.
4. In addition, letters written by the Duchy of Cornwall Office dated 14 April 1871 and 20 November 1871 indicate that the Duchy considered, ‘the soil of the common called West Looe Down’ was, and continued to be, ‘parcel of the possessions of the Duchy of Cornwall as being part of the Duchy Manor or Lordship of Portpigham alias West Looe’.
5. While this does not provide conclusive evidence that the application land formed part of the manor of Portlooe, it does indicate that the application land is in an area which is recognised to be manorial. Furthermore, it indicates that there was an area of land known as West Looe Down which was considered to be common land.
6. The Applicant also draws attention to a number of documents which include references to West Looe Downs and its status as common land. These include an Indenture dated 25 December 1786 between the Mayor and Burgesses of West Looe and John Lemon and an advertisement published in the West Briton on 30 April 1852 relating to the auction of a number of lots - including lot 6 which was purported to include a right of common on West Looe Downs. In addition, the Applicant draws attention to a Charity Commission Order dated 20 February 1931 which makes specific provision for an area of around 14 acres of land referred to as ‘West Looe Downs and known as the Common’ to be used and enjoyed for recreation by the inhabitants of the borough.
7. Likewise, the History of East and West Looe by John Keast (1987) describes the Downs in the period 1603 – 1715, noting that they reached to the waters of the West Looe River.
8. Overall, while I cannot be certain that the land was manorial in origin, I consider the evidence that the application land lies in an area which is recognised to have been manorial to be persuasive. Furthermore, the historic references to the land’s status as common land provide a good indication that it was, at some time, considered to be waste land of the manor and used as such by the local inhabitants. This was not disputed by the Objector and in the absence of any evidence to the contrary, I consider that, on the balance of probabilities, the land was formerly wasteland of the manor of Portlooe.

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

1. In the case of *Attorney General v. Hanmer (1858) 2 LJ Ch 837* (‘Hanmer’), it was held that the true meaning of waste land of a manor is “..the open and uncultivated and unoccupied lands parcel of the manor other than demesne lands…”.
2. Further guidance on the approach to take in considering whether land fulfils the character of waste land can be found in the 2014 Guidance. In particular, it notes that if land fails any of the criteria, the application must fail.

*Open*

1. The Objector contends that the application land is not open, pointing to areas of woodland, rear boundary treatments, roads and car parks which it considers effectively provide a well-defined boundary and enclose the site. Similar points were made by a number of local residents at the hearing, some of whom also pointed to the neighbouring cemetery as further evidence that the land was not open.
2. The 2014 Guidance makes clear that, in Defra’s view, open means unenclosed. It was clear from my site visit that the land was unenclosed. While I observed a number of boundary treatments along the rear of the site where a low wall separates the application land from the adjoining properties, I accept that it has always been customary to fence against a common and that where properties meet the boundary of the application land, it is to be expected that there would be a physical structure forming that boundary. There is nothing to indicate that these boundary treatments are in any way intended to enclose the application land or prevent access to it. Furthermore, even if they were, in view of the numerous other access points, they are likely to prove ineffective.
3. Likewise, while I note that the application land is bounded by roads, residential properties and some trees along its boundaries, it is nevertheless open and publicly accessible from a number of points (a point acknowledged by the Objector at the hearing). Furthermore, I heard evidence from local residents, that the application land was accessible at many different locations and that anyone could get access to it at any time. While I accept that it is inaccessible in places where the vegetation has become dense, that does not alter the fact that anyone wishing to enter onto the land can do so without impediment.
4. Overall, I am satisfied that the land is open and unenclosed and is accessible to those who wish to enter onto the site.

*Uncultivated*

1. There is no legal definition of cultivation but there are some obvious activities that would amount to it, for example, ploughing and the planting of crops. However, it is clear that traditionally a broad approach has been adopted and whether land has been cultivated in the Hamner sense will often depend on the extent of the activities undertaken.
2. I accept that the application land is well kept and well managed, and that the Objector has expended considerable amounts over the years to ensure that it remains an important local amenity. I also note the various ecological and other enhancements that the Objector has sought to deliver on the site. This has included providing a football pitch, carrying out regular mowing, maintaining grass verges in ways that enhance the site’s ecology as well as undertaking drainage works and cutting down and planting trees. I also heard evidence from a number of local residents who explained that the works undertaken to the trees had improved their condition, and how regular mowing by contractors and the overall management of the land by the Objector had improved it for the benefit of users.
3. Nevertheless, all of these activities are the sorts of activities one would expect to see as part of a management regime. While they clearly make the land more appealing to those who use it, there is nothing to indicate they were undertaken for the benefit of the owner, were of a large scale or were intended to generate any sort of crop or profit. They do not, in my view, fall within the ordinary meaning of ‘cultivation’.
4. At the hearing, I was directed by the Objector’s representative to footnote 157 in *Gadsden and Cousins on Commons and Greens (Third Edition)* which refers to the case of *Re Chislehurst and St Pauls’ Cray Commons, Bromley, Greater London (1974 59/D/9-10)*, as an example of where so much had been done to the land that it had ceased to be uncultivated waste. While I note that the Objector has been unable to provide a copy of that case, the footnote itself casts doubt on the correctness of that decision, noting that the circumstances were somewhat unusual. In any event, I have seen no evidence that the activities undertaken by the Objector were of such an extent that they would have resulted in the application land ceasing to be waste. Indeed, I heard evidence that the topography of the site had not changed in centuries and, other than the car park located along the northern boundary (“the Car Park”)) (a matter to which I return below), there is no evidence of any physical improvement that has altered the character of the application land to any great extent.
5. While I acknowledge the efforts made by the Objector to ensure the site is carefully maintained and managed for the benefit of the inhabitants of West Looe, it was clear from my site visit that the land was uncultivated. Accordingly, I find that the application land meets the requirements of Hamner in that respect.

*Unoccupied*

1. The 2014 Guidance indicates that occupation requires some physical use of the land to the exclusion of others.
2. The Objector claims it has exclusive possession of the application land but allows members of the public and local clubs to use it.
3. It was clear from my site visit that the main area of land (excluding the Car Park) is well used by the public. Indeed, as noted at the hearing, the Objector actively encourages members of the public and local groups to use the land, including for dog walking, informal games, football and other recreational activities. However, while it is clear the land is well used and well managed, there is no evidence that it is being occupied or used for any purpose other than public recreation. Likewise, there is nothing which would indicate that there was any physical use of the land to the exclusion of others. I am therefore content that the main application site is unoccupied.
4. The same, however, cannot be said for the Car Park. This small area of hardstanding and paving is used by the Objector for both access and to generate income from the issuing of parking permits to nearby residents. It contains signs which make clear that it excludes use by those who do not have permits and provides a good indication that the land is occupied within the meaning of Hanmer. Furthermore, as the 2014 Guidance makes clear, land which is otherwise eligible for registration under paragraph 4 of Schedule 2, but which has been developed, improved and brought in hand, or otherwise fails to fulfil the character of waste land of the manor, cannot be registered. In my view, the car park, falls within this definition.
5. While I accept that the use of the land as a car park is not in itself compatible with common land status, in the present case, it is clear that this area of land was of a different character altogether to the rest of the application land. Notwithstanding that it provides access on foot to the main area of land, I consider it would be considered by most casual observers to be occupied.
6. Accordingly, while I do not consider the Car Park meets the definition of waste in the Hanmer sense (and as such should not be registered), I find that the remainder of the application land is unoccupied and satisfies this part of the definition.

**Other matters**

1. In both its statement of case and orally at the hearing, the Objector sought to draw parallels between the circumstances of this case and that of *R (on the application of Newhaven Port and Properties Limited) v East Sussex County Council [2015] UKSC 7 (“Newhaven”)*, where the Court held that registration of land as a town and village green was statutorily incompatible with the purpose for which the land was held (referred to by the Objector as the doctrine of statutory incompatibility).
2. However, the Objector confirmed at the hearing that it was not seeking to rely on that doctrine and that it was merely seeking to draw parallels between the circumstances of the present case and that of *Newhaven*. Instead, it argues that the Objector holds the land on trust and that the addition of the land to the register of common land would be incompatible with the objects of that trust. In particular, it is concerned that registration would affect its ability to undertake works flexibly and would place additional financial burdens on it.
3. It is clear from the evidence I heard from local residents that the Objector provides important services to the residents of West Looe and is greatly valued within the community. Furthermore, it is understandable that there is concern about what registration of the land would mean for the use of the site and the Objector’s ability to manage it effectively. However, the Objector has not provided any detailed evidence of how it would result in additional costs or how the registration of the land would affect its ability to undertake any planned or intended works. While I acknowledge that certain types of works may in the future require consent under section 38 of the 2006 Act, these are generally those which have the potential to interfere with the public’s ability to use the land or adversely impact on the site’s ecology and the landscape. Based on the limited evidence available, it would seem that these aims generally align with the aims of the Objector and the purposes for which it holds the land.
4. Furthermore, while I heard evidence that the Objector has some plans for further enhancement of the land, these are at an early stage and there is no evidence that the registration of the land as common would prejudice its ability to realise them. Indeed, no convincing argument has been advanced which would indicate that the registration of the land as common land would have any meaningful impact on the Objector’s ability to manage the land for its intended purpose or affect its ability to realise the trust’s objectives.
5. Accordingly, I consider that the registration of the land as common land would not be incompatible with the objects of the trust and is unlikely to materially impact on the Objector’s ability to manage the land for the purposes for which it is held. In any event, I note that such considerations fall outside the criteria against which the application should be assessed.

**Conclusion**

1. I have found above that the application land is, on the balance of probabilities, wasteland of the manor of Portlooe. I have also found that the application land (excluding the Car Park) fulfils the character of waste land of the manor - being open, unoccupied and uncultivated.
2. Consequently, having regard to these and all other matters raised, I conclude that the relevant criteria for the registration of the application land (excluding the Car Park) are satisfied. It follows that the application should be allowed in part and the application land, excluding the Car Park, should be added to the register of common land.

Rory Cridland

INSPECTOR

**APPEARANCES**

**For The Applicant**

Tomas D.J.S Hill Applicant

**For the Objectors**

Mr Gareth Pinwell Ashfords LLP

**For the Commons Registration Authority**

Hannah Rodger Countryside Access Team, Cornwall Council

**Others who spoke at the hearing**

Vivienne Finnigan Local Resident

Paul Smythe Local Resident

Donna Ferguson-Ball Local Resident

Sue Pengelli Clerk to the West Looe Town Trust

Vivienne Sullivan Local Resident

Frank Wright Local Resident

James Dingle Local Resident

Armand Toms County Councillor

Hillary Wright Local Resident

**Schedule 1 - PLan**

**Plan referred to in Paragraph 2
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