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| **Application Decision**  Hearing held on 20 February 2025  **by Claire Tregembo BA (Hons) MIPROW**  **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs**  **Decision date: 5 March 2025** |
| Application Ref: COM/3329763 Hendra Goth Register Unit: CL605 (Original provisional registration number)  Registration Authority: Cornwall Council   * The application, dated 24 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, and the land shown on the plan attached to this decision shall be added to the commons register.

**Procedural matters**

1. I carried out an unaccompanied site visit on 19 February 2025, where I was able to view the application land and the surrounding area.
2. At the start of the hearing, one of the parties asked to record it in case they wished to refer back to it. Another party objected to this as they were not satisfied that it would not be made available online. If recording is to be permitted, I need to ensure that all parties are happy with this and are comfortable presenting their evidence without concern that it may be used against them or placed in the public domain without their permission.
3. As some parties did not wish to be recorded and because I did not consider it in the public interest, I did not permit the hearing to be recorded. I advised the parties to take notes in case they wished to refer back to them and that I would be taking my own notes to aid my decision making.

# The Application Land

1. The application land is known as Hendra Goth and consists of grassed areas along the north side of a road with metalled and gravel areas that largely provide access to adjacent properties. On the south side of the road is a registered parcel of common CL605. This parcel was part of the same provisional registration but received no objection and became final on 23 May 1973.

# Main Issues

1. The main issue is whether the land was waste land of manorial origin 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;
   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 paragraph 4 to Schedule 2 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 CL605 on 24 February 1970 following an application from the Ramblers Association dated 31 December 1969.
2. Objections were raised to the provisional registration of CL605 on 30 September 1970 by Mrs Constance Barry.
3. Entry 2 in the Register of Common Land (RCL) dated17 September 1973, states the provisional registration was modified under Regulation 8 of the Commons Registration (Objections and Maps) Regulations, 1968. This permitted the Commons Registration Authority (CRA) to cancel or modify a registration to which objections were made at the request of the applicant. The RCL sets out that the application land was removed pursuant to an application dated 23 May 1973 made by the Ramblers Association.
4. This fulfils the criteria set out in paragraph 4 of Schedule 2 of the 2006 Act.

## Whether the land is waste land of manorial origin

1. It is seldom possible to prove definitively that a particular parcel of land is of a manor. But it is 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 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.
3. In support of the registration, the applicant states the application land is situated in the Manor of Tywarnhaile. On the Map of the Manor of Tywarnhaile 1846, the application land is part of a large parcel of land that appears to be open with an unenclosed track across it. Registered common CL605 and what are today several fields are also part of this parcel.
4. The same parcel of land is shown as Apportionment 3129 on the Perranzabuloe Tithe map 1840. The parcel appears to be open land with no tracks or roads across it, although several enclosed routes lead to it. In the Tithe Apportionment, parcel 3129 is listed under the heading *‘Commons, Roads, and Wastes Exempt from Tithes’* as *‘Common at Hendra Goth’* with no rent charge or state of cultivation.
5. The Land Registry Title for CL300471 records Freehold mines and minerals under the application land, which is part of *‘the Manor of Tywarnhaile’*.
6. It was suggested that the application land is not waste of the manor but roadside verge. Although there is a presumption that the verge and soil of the highway belong to the adjoining landowner, this presumption can be rebutted, and they may be manorial waste. The facts of a particular case will need to be taken into consideration when determining if land is waste of the manor or roadside verge. In *Grose v West* [1816] 129 ER 16, Gibb C J said, *‘for if the narrow strip be contiguous to or communicate with open commons, or large portions of land, the presumption is either done away, or considerably narrowed’*.
7. No evidence was put before me to indicate the application land is part of the highway. The application land is shown as part of a larger parcel of land on the Tywarnhaile map and Tithe map that also includes the registered common on the other side of the road. On the Tithe map, no routes are shown over it, and the parcel is listed as *‘Common at Hendra Goth’*. Other parcels on the Tithe map were listed as commons with roads through them or as roads. On the later Manor of Tywarnhaile map, an unenclosed route is shown across the parcel, but it has the appearance of a way over open land rather than a road with verges.
8. Furthermore, the Land Registry Title for CL55119 (land to the north of the application land) refers to a 1989 Conveyance granting a right of way with or without vehicles to gain access to the land. The right of way is shown on the Land Registry Title plan running along a track abutting the application land and then across it near its northwestern end. The Land Registry Title for CL27164 also refers to a 1978 Conveyance that granted a right of way across the application land to *‘gain access to the public highway’*. If the application land were part of the public highway, there would not be a need to grant a private right of way across it.
9. Having regard to the above, the evidence of the land being of a manor is persuasive and without convincing evidence to the contrary, I consider the evidence is sufficient, on the balance of probabilities, to show the application land is waste land of a manor.

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

1. The question as to whether land is waste land of a manor is one which must be satisfied at the date of the application on 24 December 2020. Having regard to the definition of waste land of a manor in paragraph 13, I must now consider the character of the application land.

*Open*

1. Generally, ‘open’ in this context means unenclosed. Some parties considered the land to be enclosed by boulders that they claimed would deter pedestrians and vehicles from accessing the land. However, there are large gaps between these boulders that do not impede access on foot, and I do not consider they deter pedestrian access. Their purpose appears to be to prevent parking on the application land. There are also boulders on the edge of the registered section of CL605 on the other side of the road.
2. There is a hedge along the northern boundary, but its purpose appears to be to enclose the adjacent land rather than the application land. I have seen no evidence to suggest the situation was any different at the date of the application.
3. Overall, it is my view that the application land was ‘open’ at the date of the application.

*Uncultivated*

1. 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.
2. Most of the application land is mown grass with some ornamental grass and trees planted along the northern edge of the application land west of the access to Little Treamble Holidays, with shrubs also planted on either side of this access. East of the access to Little Treamble Holidays, there are gorse and trees along the northern boundary. The registered common on the other side of the road is also mown.
3. *R v Doncaster Metropolitan Borough Council ex parte Briam* found mowing was not cultivation as it was not done to produce a crop. However, it was suggested that the planting gives the appearance of a garden and is, therefore, cultivated. Other parties considered that management to maintain a common is not cultivation, and the Lord of the Manor would have had a right to plant trees other than for forestry purposes.
4. I consider the planting on the application land to be minimal, and it does not have the appearance of a garden. Therefore, I consider it 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 the lawful use of the land. There should be physical presence or user and control, but this does not have to be at all times.
2. It was suggested that the boulders, signs for Little Treamble Holidays, planting, property accesses, use for dog walking by holidaymakers, and mowing show that the land is occupied and controlled, and indicates a physical presence and use of the application land.
3. I was informed that information is provided to those staying at Little Treamble Holidays advising they should walk their dogs on the application land rather than on-site. However, there is nothing on the application land to indicate this is a dog walking area or that it should only be used by people staying at Little Treamble Holidays.
4. There are metalled accesses to adjoining properties, but there is nothing to indicate the public are excluded from them where they cross the application land. Furthermore, consent for works on commons can be granted to provide a metalled access to adjoining land. Therefore, I consider the accesses over the application land are not incompatible with registering it as a common, and they do not indicate the exclusion of others.
5. There were two signs on the application land at the time of my site visit. One at the very south-eastern corner providing directions to Little Treamble Holidays and a second alongside the access close to the northern edge. Google images from 2019 also show a small ‘A-board’ sign advertising a drinks terrace near the access to Little Treamble Holidays and a small sign in the registered common on the other side of the road. These signs appear to be minimal and direct people to the holiday parks. I do not consider they indicate a physical presence, control, or occupation of the application land.
6. The application land is open, and there is nothing to exclude the public from it or indicate the physical use of the land to the exclusion of others. Therefore, in my view, the application land was unoccupied at the time of the application.
7. Considering the evidence as a whole, at the time of the application, the application land can be described as open, uncultivated, and unoccupied. Therefore, the application land fulfils the character of waste land of the manor.

# 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, and consequently, I approve the application.

Claire Tregembo

INSPECTOR

**APPEARANCES**

**The Applicant**

Tomas Hill

**For the Commons Registration Authority**

Hannah Rodger Business Support Officer, Cornwall Council

**Interested Parties**

Emily Davies Adjoining Landowner

Martin Wright Member of the Public

**Application Land**

**Plan referred to in Paragraph 1.
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