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| **Application Decision**Hearing held on 18 February 2025**by Claire Tregembo BA (Hons) MIPROW****an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs****Decision date: 26 March 2025** |
| Application Ref: COM/3329771 Towan BeachRegister Unit: CL317 (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.
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# 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 16 August 2024, where I familiarised myself with the application land and surrounding area.

**Preliminary Matters**

1. The hearing was originally scheduled for 15 August 2024. However, the map displayed on site with the hearing notice did not cover the full extent of the application land. To ensure everyone with an interest in the application land was aware of the land affected, the hearing was postponed and readvertised with the correct map displayed.
2. It has been suggested that the application land does not include the beach above the mean highwater mark. However, the mean highwater mark is shown on the provisional registration map and labelled *‘HWMMT’*. Land above this line is included in parcel CL317, which is outlined in green and hatched. Therefore, I am satisfied that the application land includes the beach above the mean highwater mark.

# The Application Land

1. The application land is known as Towan Beach and consists of cliffs, beach, and foreshore at Towan Beach, Gerrans, Cornwall.

# Main Issues

1. The main issue is whether the land was waste land of manorial origin at the date of the application on 22 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 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 CL317 on 24 October 1968 following an application from Gerrans Parish Council dated 14 June 1968.
2. The National Trust made an objection to the provisional registration of CL317 within their ownership on 14 June 1972. No objections were raised to the land at the northeastern end of the provisional registration which was owned by another party.
3. Entry 2 in the Register of Common Land (RCL) dated 18 July 1973, records that 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 sets out that the application land was removed pursuant to an application dated 24 June 1973 made by Gerrans Parish Council.
4. I consider the criteria of paragraph 4(5) of Schedule 2 to the 2006 Act have been met for the land in the ownership of the National Trust.
5. However, no objection was made to the provisional registration of the land at the northeastern end of the application. Therefore, a closer reading of the legislation is required.
6. The 2006 Act aims to rectify deficiencies with the 1965 Act. Some land provisionally registered was wrongly struck out, and other common land was overlooked and never registered. A provisional entry under the 1965 Act would have become final unless it was cancelled. Where provisional registrations were cancelled at the request of the applicant, there was no opportunity for the wider public interest to be considered in relation to the application. There would also have been no opportunity to consider if the application land qualified for registration as waste land of the manor.
7. The northeastern end of the application land was provisionally registered and there were no objections to it. If the provisional registration had not been cancelled, this part of the application land would have been registered as common.
8. At the hearing it was suggested that Gerrans Parish Council only made an application to cancel the provisional registration of the land owned by the National Trust. If this were the case, this would indicate an error was made because land that did not receive an objection should have remained on the RCL. Therefore, it would be possible to rectify this mistake. However, the correspondence requesting the cancellation of the provisional registration is not available, and the Register states *‘the whole of the land involved in the provisional registration has been removed from the register pursuant to an application dated 24 June 1973 made by the Gerrans Parish Council’*. Therefore, it is not possible to establish if an error was made when removing the land from the RCL.
9. Breaking down paragraph 4(2) of Schedule 2 of the 2006 Act, sub-paragraph (2) applies to *‘land* (my emphasis) *which at the time of the application under sub-paragraph (1) is waste of the manor’*. Sub-paragraph 4(2)(a) states, *‘the land* (my emphasis) *was* *provisionally registered as common land under section 4 of the 1965 Act’*. However, sub-paragraph 4(2)(b) only refers to *‘an objection’ being ‘made in relation to the provisional registration’*. It does not refer to land or indicate in any way that the objection had to be to all of the land provisionally registered. Sub-paragraph 4(2)(c) concerns the cancelling of the provisional registration.
10. As the intention of the 2006 Act is to rectify errors, and as 4(2)(b) only refers to an objection, not an objection to all of the provisional registration land, I consider the criteria of paragraph 4(5) of schedule 2 of the 2006 Act has also been met in relation to the northeastern end of the application land.

## 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 (*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.
3. In support of the registration, the applicant states the National Trust land is situated in the Manor of Bohurrow. The northeastern end of the application land is within the Manor of Rosteague. Both manors were formed out of the Manor of Tregeare. I will set out the evidence for each manor separately.

*The Manor of Tregeare*

1. The Manor of Tregeare was listed in the Domesday Book as the Manor of Tregel. Phillimore’s publication of the *‘Domesday Book Cornwall’* suggests the Manor of Tregeare existed before 1066 as does the book *‘Gerran Through the Ages’*.
2. A Survey of the Manor of Tegeare in 1863 refers to parcel 83 as *‘waste’* with a note stating, *‘the freehold of this no. being claimed by the Duchy, it is of no value to the Estate except to save sea weed’*.

*The Manor of Bohurrow*

1. The 1840 Tithe map for the parish of St Anthony indicates the parish is within the Manor of Bohurrow. Most of the application land is shown, including almost all of the section within the parish of Gerrans. It is not allocated an apportionment number. The purpose of tithe records was to identify titheable land that was capable of producing crops. As the application land comprises beaches, and foreshore, it is unlikely to have produced crops and this may be why it was not given an apportionment number.
2. An undated set of foreshore maps for St Anthony and St Just, shows most of the application land within the Manor of Bohurrow.
3. An 1835 Rent Book for the Manor of Bohurrow lists parcel 28 as *‘Beach (to land Oysters)’.*

*The Manor of Rosteague*

1. The Manor of Rosteague is listed in the Manorial Documents register, but no known records survive.
2. In the book *‘Gerran Through the Ages: A Parish History for the Millennium’* it states *‘the first mention of Rosteague is in the 13th century when a Ralphe de Restak was it’s owner. By the 16th century it was owned by the Petits…’During this politically tempestuous century, the manor was confiscated by Henry VIII in response to the treason of Winslade, the owner of the time’*.
3. In *‘The Roseland Between River and Sea’* by Laurence O’Toole, it states *‘on this eastern side the fields end in low cliffs which overlook Towan Beach. The Coast here is fretted with reefs and small coves. The Lords of the manor of Rosteague once held profitable rights of wreck along this shore’*.
4. The northeastern corner of Towan Beach is shown on the Tithe Map for Gerrans as part of apportionment number 906 which is listed in the Tithe Apportionment as *‘Waste’* with nothing listed under the heading *‘State of Cultivation’*. The extract of the Tithe map provided has been overlaid onto the modern Ordnance Survey mapping and appears to have been cropped without showing the full extent of apportionment number 906. It is not clear if this is as a result of the transfer to the Geographical Information System, damage to the map, or some other reason. Without seeing the original map, it is not possible to establish if any of the foreshore was included in the apportionments. Tithe maps normally show some of the surrounding area, and do not end abruptly at the edge of the Tithe Apportionments. By comparison, the Tithe map for St Anthony includes the coastline, the English Channel, St Mawes and its harbour, and St Anthony Pool.
5. A conveyance dated 7 May 1902 between the Duchy of Cornwall and Lucien Van Gruthen includes part of the application land. The foreshore between the high and low watermarks was sold by the Duchy of Cornwall to Lucien Van Gruthen where it abutted the Rosteague Estate. It also included the foreshore between the high and low water marks at Porth Creek and a small parcel of land at Froe alongside the Creek.
6. *‘The Rosewarne and Portions of the Rosteague Estate’* owned by Mr Van Grutten were sold at auction in 1920. It did not include the application land. No manorial rights were included in the sale.
7. In 2003 the sales brochure for Rosteague described it as *‘an historical and substantial Manor House’* that included *‘coastal slope and foreshore’*.

*The views of the relevant parties*

1. The objectors refer to an earlier Application Decision I made for COM/3314044 Breakneck, Peter’s Splash, and Raven’s Hole Beaches Register Unit CL343. In that decision, I determined the evidence was not sufficient to show that most of the application land was waste land of a manor. The land at the northeastern end of the application land is in the same ownership as the land in my earlier decision.
2. The objectors consider that because the application land at the northeastern end between the mean high and low water marks derives from the same 1902 conveyance as the land in the decision for COM/3314044, it demonstrates that it was derived from the Duchy and is therefore not of a manor. Any land conferred to the Duchy under the 1337 Royal Charter by Edward the III could not have included land that had already been gifted as a manor. The objectors refer to the prerogative that the Crown is prima facie the owner of the foreshore or land between the high and low water mark. They state there is no evidence that the Duchy of Cornwall ever owned the manor of Tregeare. Therefore, they consider the application land between the mean high and low water marks has never been part of a manor. They also consider it is not waste and suggest it is demesne land.
3. The objectors also refer to the Right to Wreck. 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. 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.
4. The objectors also cite *The Duke of Beaufort v The Mayor, Aldermen and Burgess of Swansea [1849] ER 413, 154 ER 905* (*Beaufort*)which found that *‘the presumption of law is, that the seashore is not part of the manor’.* However, *Beaufort* went on to find that if there is evidence that the seashore is within the manor *‘the presumption is changed in favour of the Lord of the Manor’.* Therefore, the foreshore may be granted to the manor.
5. The applicant refers to Halsbury's Laws of England which states the extent of the manor *‘may include the foreshore of the sea’* and it has been held that *‘in the great majority of cases the right to the foreshore between high and low water mark is in the Lord of the Manor’.*
6. The applicant considers that the 1902 conveyance does not explain its background or preclude it from being of manorial origins or administered within the Manor of Rosteague between 1902 and the abolition of the Manorial system by the Law of Property Act 1922. They consider it cannot be assumed the Duchy came into possession of the foreshore due to the 1337 Royal Charter. It may have been passed to the Duchy by Henry VIII after he confiscated the Manor of Rosteague.
7. The applicant states the Right of Wreck is not a right of common but would have been recorded at the manor court within the presentments. This demonstrates a clear link between the beach and the manor. Furthermore, the applicant states that, contrary to the claims of the objectors, the Right of Wreck can be a prescription and not granted by the Crown. Extracts from *‘A history of the Foreshore and Halls Essay on the Rights of the Sea-Shore’* by Stuart A Moore (1888) provides examples where the right of wreck in Cornwall was held by the manor.
8. The applicant considers the application land meets the definition of waste land citing to *Hanmer* where Watson B stated *‘it appears to me to be clear that the word “waste” is sufficient to pass the foreshore. The word “waste” means desolate or uncultivated ground, land unoccupied, or that lies in commons. This is the plain and common exception of the word, and, undoubtedly land between the high and low watermarks falls within this signification… Bayley, J. in delivering his judgement in Scratton v Brown, calls the land between high and low watermarks “Wastes”’*.

*My Findings*

1. The application land in COM/3314044 was claimed to be in the Manors Rosteague and Treloan, with both formed out of the Manor of Tregeare.The Boscawen family owned the much of the manor in this area and had done for over 600 years. The foreshore was not included in their landownership, except for two small islands that were above the mean high water mark. 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. I concluded that this suggested the islands were granted with the manor, but the foreshore was not. However, this does not mean that the foreshore was not part of the manor on other sections of the coast.
2. No evidence has been provided to show how the Duchy acquired their land before selling to Lucien Van Gruthen in 1902. If it was granted under the Royal Charter, it is unlikely to have been part of a manor before 1337. However, the Duchy acquired 19 manors in 1421 when they were transferred by Henry the V, and in Henry VIII reign, other manors were transferred to the Duchy of Cornwall by an Act of Parliament.
3. The 1902 Conveyance shows the Duchy of Cornwall owned the foreshore at the northeastern end of the application land until 1902. However, it also shows they owned land within the Manor of Rosteague at Froe as well as the foreshore there. This suggests the Duchy of Cornwall may have previously owned the manor.
4. The Foreshore maps show most of the application land is in the Manor of Bohurrow. The 1840 St Anthony Tithe map shows the application land, including most of the land at the northeastern end, within the Manor of Bohurrow. The Tithe map for Gerrans shows part of the application land as waste in the ownership of Mary Hartley, whom I am advised was part of the Van Gruthen family who owned Rosteague Manor. The Lords of Rosteague Manor once held rights to wreck along the shore although it is not clear if this was a right of the manor or acquired through another grant.
5. The application land in COM/3314044 is over a kilometre north of the land in this application. The separate ownership of the islands and the foreshore along that part of the coast suggested the foreshore there was not part of the manor. However, the evidence for this application suggests the foreshore here is part of the manor as well as the beaches. The foreshore at the northeastern corner of the application land may once have been held by the Duchy of Cornwall, but there is nothing to show they acquired it under the Royal Charter. I consider it unlikely that most of the application land, which is all part of the same beach and cove, would be part of the manor but the northeastern corner would not be.
6. Case law has found that the foreshore is waste, and the Gerrans Tithe map records the beach as waste.
7. Having regard to the above, the evidence of the land being of a manor is persuasive and I consider it is sufficient, on the balance of probabilities, to show that 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 22 December 2020. Having regard to the definition of waste land of a manor in paragraph 19, I must now consider the character of the application land.

*Open*

1. Generally, ‘open’ in this context means unenclosed. On my site visit I noted that although the land is bounded on its northwestern boundary by cliffs and to the southeast by the sea, the land itself is unenclosed. A bridleway also provides public access to the beach. Photographs indicate the situation was no different at the date of the application.
2. The objectors consider the sea would enclose the land at high tide making it inaccessible. However, another party said she wades through the sea prawning and considers it to be open. The applicant refers to Section 22 of the 1965 Act which clarifies that land *‘includes land covered with water’*.
3. I do not consider the sea or cliffs to be an enclosure, and 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, and it is therefore necessary to consider each case individually and assess the degree of cultivation that has taken place.
2. In this case, the application land is beach and foreshore, and I saw no obvious indication of cultivation during my site visit. The objectors consider that beaches and foreshore cannot be cultivated. Therefore, in their opinion, if land cannot be cultivated, it cannot be uncultivated because there is no alternative state. This is not a view I share.
3. It is my view that it is reasonable to describe the land as uncultivated for the purpose of the 2006 Act.

*Unoccupied*

1. For land to be occupied there must be some exclusivity of physical use by a tenant or owner alone. 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.
2. There is no evidence that the land is managed to the exclusion of others. A public bridleway provides access to the beach. There is a sign erected by the National Trust at the end of the bridleway advising what to do in an emergency, the dangers from the cliffs and the sea, and that there is no lifeguard service here. Another sign provides information about seals and requests that they are not disturbed. I consider this indicates the National Trust acknowledge use of their land by the public and shows they do not exclude others.
3. The objectors consider there must be some form of physical presence, but this does not have to be at all times. They cite other cases where the grazing of sheep has been found to be occupation and consider the use required to demonstrate occupation is low. They consider that use by the landowners from time to time for paddling or an evening stroll amounts to occupation even if other people are there. They suggest occupation does not have to mean to the exclusion of others. The application land is in front of their house, and they consider the nature of the land means it is occupied. They have the land in hand and occupy and control it for their own use.
4. Other parties refer to regular use of the application land by members of the public. They have seen no evidence of occupation or control of the application land by the landowners and do not recall seeing them there. The only management they know about is by volunteers who clear rubbish from the beach.
5. The objectors also suggest a covenant in the 1902 Conveyance which prevents them from erecting or placing anything in the foreshore to obstruct or affect navigation means the land cannot be classed as open or unoccupied.
6. They refer to an application to register land as common in Kent which was withdrawn by the applicant because evidence was submitted that showed the land was not capable of registration. There was a conveyance on that land preventing building on it. However, there was also clear evidence of management of the land to the exclusion of others including signs making it clear that it was private property and only for use by residents, their visitors, service and emergency vehicles. There is no evidence of any signs or notices or any other actions to demonstrate the application land in the case before me is managed, or that others are excluded.
7. There is nothing to indicate the northeastern end of the application land is any different to the land owned by the National Trust. There is nothing to indicate it is occupied or that it is only for the use of the landowners or other parties they permit to use it. I do not consider a conveyance not to do something demonstrates land is occupied or enclosed. Some other action is required to demonstrate this such as the erection of notices.
8. Taking into account the evidence as a whole, at the time of the application, I consider the application land can be described as open, uncultivated, and unoccupied. Therefore, the application land fulfils the character of waste 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 Applicant

**The Objectors:**

Richard Bagwell Stephen Scown LLP for Howard and Janet Milton

**For the Commons Registration Authority**

Emma Walker Public Rights of Way Team Leader, Cornwall Council

**Interested Parties**

Kate Greet Chair of Gerrans Parish Council

Joanne Holah Member of the Public

Martin Wright Member of the Public

**Application Plan**