

|  |
| --- |
| **Application Decision** |
| Hearing held on 21 January 2025Site Visit conducted on 22 January 2025 |
| **by Rory Cridland LLB (Hons) PG Dip, Solicitor** |
|  **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 12 March 2025** |

|  |
| --- |
| **Application Ref: COM/3311141****Upton Towans**Register Unit No: CL678Commons Registration Authority: Cornwall Council  |
| * The application, dated 31 December 2020 is made under Schedule 2, paragraph 4 of the Commons Act 2006 (“the 2006 Act”).
* The application is made by 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 refused.

**Preliminary Matters**

1. Two applications were received by Cornwall Council (References 3058 and 3099) both of which relate to the land included in provisional register unit CL678. At the hearing, the Council confirmed that it had only referred one of those applications to the Planning Inspectorate for determination (3058) and that application 3099 had not been advertised in accordance with the requirements of the Commons Registration (England) Regulations 2014. As a result, application 3099 is not before me and I am unable to consider it further. However, there is clearly some cross over between the two applications and the issues they raise and so I have taken into account all representations made.
2. The application land was provisionally registered as common land under register unit CL678 on 10 March 1970. Eight objections were made to the provisional registration. Entry 3 in the Register of Common Land for CL678 notes that the registration was cancelled pursuant to an application dated 27 June 1973 by the original applicant. I am therefore satisfied that the application meets the requirements of Paragraph 4(2)(a) – (c) of Schedule 2 to the 2006 Act.
3. Following the submission of the application, the applicant made a request to the Commons Registration Authority to withdraw part of the land (land owned by St Ives Bay Holiday Park and referred to by the parties as ‘the affected land’) from the application on the basis that it was occupied. The withdrawal of this land was opposed by the representative of Dr V Nicholson (the applicant for application reference 3099) who maintained that the affected land was waste land of a manor at the time of the application and should be considered against the requisite tests.
4. I have given this matter careful consideration. While I note the position of the applicant, I nevertheless consider it both expedient and in the public interest to consider the affected land against the relevant tests and have done so in my reasoning below.
5. The main parties have adopted the term ‘the application land’ to refer to all of the land included in the application excluding the ‘affected land’. For ease of reference, I have adopted the same terminology below. References to the ‘application site’ includes both the application land and the affected land.

**The Application Site**

1. The application site is located in Hayle, Cornwall and extends along the coast towards St Ives. Much of the site forms part of the Upton Towans Nature Reserve (owned and managed by the Cornwall Wildlife Trust (CWT)) and has been designated as a Site of Special Scientific Interest (SSSI).
2. It consists of mostly sand dunes and marram grass with some evidence of development having taken place on parts of the site in the past - including areas of hardstanding, concrete structures and other man-made features associated with its former industrial use. It is open access land and there are a number of paths and routes enabling locals and visitors alike to access the site for walking and general recreation.
3. Between the late 1890’s and 1920 large parts of the application site were used by the National Explosives Company for the manufacture of explosives including nitro-glycerine. Parts of the site are now identified as a Scheduled Monument with the official listing explaining that one of the principal reasons for its designation is that it is an uncommon example of an explosives factory built in the late 19th century on a new site but utilising its natural components.
4. In addition to the land owned by the CWT, the original application includes the affected land together with a number of other title numbers including CL221255 and*CL297341 (Land to the rear of St Nicholas Close) and land owned by Cherwell Group Limited.*

**The objections**

1. A number of objections were received to the application. These included an objection from the Cherwell Group in respect of the land within its ownership. In response to further information received from this objector, the applicant sought the withdrawal of this land on the basis that it was enclosed at the date of the application. I have no reason to conclude otherwise and accept that the land does not meet the criteria for registration. As such, I have not considered it further.
2. An objection was received from the owners of title number CL221255. During the hearing, the owners of this land gave oral evidence of previous, exclusive use and occupation as well as explaining how they had improved the land since their ownership, including laying parts of it out as a lawn. As a result, the applicant indicated that it was content to withdraw that part of the application land, acknowledging that it no longer satisfies the definition of waste land of a manor.
3. Having visited the site, I noted the land within title number CL221255 showed evidence of occupation, with parts of it being used for storage of materials and other parts showing evidence of improvement. I do not therefore consider this land meets the criteria for registration and as such, have not considered it further below.
4. Immediately before the hearing, a further representation was received from CWT which objected to the registration of the land forming part of the CWT Nature Reserve, a large part of the application land. Representatives of CWT gave evidence at the hearing and the applicant was afforded an opportunity to respond. I have taken this into account in my determination of this application.

**Main Issues**

1. The main issues are:
	* + 1. whether the land is waste land of a manor, and
			2. whether the land has the characteristics of wasteland of a manor.

Reasons

Whether the land is waste land of a manor

*Evidence of manorial origin*

1. The applicant considers that the application site formed part of the manor of Connerton, in the parish of Gwithian. However, as is often the case, the manorial evidence is patchy and there is no direct evidence before me which would indicate the application site was part of that manor.
2. As Defra’s Guidance to Commons Registration Authorities and the Planning Inspectorate on Part 1 of the Commons Act 2006 (2014) (“the 2014 Guidance”) makes clear, it is seldom possible to prove definitively that a particular parcel of land is ‘of a manor’. Furthermore, it indicates 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 applicant has drawn attention to Pool’s analysis of the Penheleg Manuscript (1959) which indicates that the manor of Connerton included all of Gwithian parish south of the red river, a description that I accept is likely to include the application site. Furthermore, I note the manorial documents register records that there were two manors situated in the parish of Gwithian; the manor of Connerton and the Manor of Godrevy. While I cannot be certain that the application site formed part of the manor of Connerton, it is more likely than not to have been situated in one or other of those two manors. I am therefore satisfied that the application site lies in an area that is recognised to have been manorial and can be said to be ‘of the manor’.
4. Nevertheless, there is little direct evidence that the land formed part of the waste land of either manor. Instead, the applicant argues that sand dunes, also known locally as ‘towans’, are unsuitable for arable cultivation and instead comprise natural resources useful for agriculture. Furthermore, it points to other nearby areas, also known as towans, which were considered to be waste and registered as such under the 1965 Act - including in the neighbouring manor of Godrevy. It argues that it is not unreasonable to conclude that a similar status also applied to the application land.
5. I do not agree. While I accept that the history of the application site is complex and it is clear that it has consisted of sand hills or ‘towans’ for a number of centuries, the registration of other, albeit neighbouring areas, does not provide any meaningful support in favour of the application. While it may indicate that the application site was unsuitable for arable farming, this sheds little light on the actual status of the land during manorial times.
6. Many of the tenements associated with the manor were sold off in the early 19th Century as the manor declined and the manor itself was subsequently sold. Following its sale, the 1938 Tithe Survey records the application site as ‘Great Towan’ but does not record it as waste (whereas other plots are so recorded). However, as with much of the evidence before me, this adds little in terms of understanding the land’s status.
7. On balance, even though I have found above that the application site is likely to be manorial in origin, there is little evidence, either in the manorial records or the other documentary evidence before me which would indicate that the land was, at any time, considered to be waste land of a manor. Indeed, there is little evidence in the historical record which would shed any light on the status of the land during manorial times.

**Whether the land has the characteristics of waste land of a manor**

1. Paragraph 4 of Schedule 2 of the Commons Act 2006 applies to land which, at the time of the application, is waste land of a manor. In the case of Attorney General v. Hanmer (1858) 2 LJ Ch 837 (‘Hanmer’), it was held that the meaning of waste land of a manor is “the open and uncultivated and unoccupied lands parcel of the manor other than demesne lands…”.
2. The 2014 guidance makes clear that, in Defra’s view, the question of whether land is waste land of the manor must be satisfied at the time the application or proposal is submitted. It also makes clear that land which is otherwise eligible for registration under paragraph 4 of Schedule 2 but which has been developed, improved and brought in hand, or which otherwise fails to fulfil the character of waste land of a manor at the time the application is submitted cannot be registered.

*The application land*

1. The application land consists of sand dunes, open to the public and forming part of the local nature reserve and SSSI, most of which is managed by the CWT. It also includes a small area of land adjacent to St Nicholas Close (title number CL297341). However, there is little which would differentiate the land within that title number from the rest of the application land.
2. None of the application land is enclosed and it clearly provides a valuable amenity space for local residents and visitors to the area alike. The height and extent of the dunes provides breathtaking views towards the ocean and, having visited the site, I am satisfied that the application land was open and unenclosed at the date of the application and remains so.
3. Likewise, there is no evidence to indicate that it was being cultivated or otherwise occupied at the time of the application. While I note the views of CWT that it occupies the land under the terms of a 99-year lease (and did so at the time of the application), its occupation is not exclusive and many of the activities it carries out are akin to management of the land. This includes clearing scrub, creating ponds, maintaining public access infrastructure and reinstating conservation grazing – none of which indicate the land is being cultivated or exclusively occupied within the meaning of Hanmer.
4. Overall, I am satisfied that the application land was open, uncultivated and unoccupied at the time of the application.
5. However, the evidence indicates that this has not always been the case. Indeed, while there is limited information available on the use of the land during the days when the manor was functioning, the evidence indicates that significant parts of both the application land and the affected land were developed, improved and brought in hand (or otherwise ceased to have the character of waste land of the manor) during the late 19th and early 20th century.
6. Indeed, the occupation and use of the application land by the National Explosives Company during this period for the production of nitro-glycerine saw the erection of significant amounts of security fencing around the site’s perimeter. Much of this fencing remained in place until the mid-20th century, enclosing the land for a considerable period of time.
7. Furthermore, I note that much of the site is now identified as a Scheduled Monument with the official listing explaining that the main manufacturing area was located at the highest point in the dunes and workers in this area had to pass through special changing and search rooms to ensure they were wearing the correct clothing and carried no prohibited articles which could be dangerous with explosives. This indicates that access to large parts of the application land was restricted at this time.
8. Moreover, there is some evidence to indicate that marram grass was cultivated on the site during the time it was used in connection with the explosives factory. Indeed, the official historic listing notes that extensive planting of marram grass was undertaken to stop sand blowing off the dunes and that four men were employed specifically for this purpose. While I accept it is unclear as to the extent to which such planting took place, it does provide a further indication that the land had been taken in hand by an owner (in this case the National Explosives Company) for its own exclusive use. This provides a strong indication that, even if it was at one time waste land of a manor, it ceased to be so at this time.
9. Turning then to occupation, as the 2014 Guidance makes clear, occupation requires some physical use of the land to the exclusion of others. In the present case, there is considerable evidence to indicate that much, if not all, of the application land was occupied exclusively by the National Explosives Company and its successors in title for more than half a century.
10. I note the applicant argues that what matters is not whether the land has been enclosed, occupied or cultivated in the past but instead what its character is at the time of the application. However, I do not agree. While I accept that its character at the time of the application is part of the consideration, where there is evidence that land has been developed, improved and brought in hand, or otherwise fails to fulfil the character of waste land of a manor, the 2014 Guidance makes clear it should not be registered.
11. Accordingly, for the reasons given above, I consider the application land does not meet the definition of waste land of a manor due to its previous periods of extensive enclosure and exclusive occupation. As such, I conclude that it does not qualify for registration.

*The affected land*

1. The affected land consists of the land comprised in title number CL263878 and forming part of the St Ives Bay Holiday Park. It is open in the sense that it can be accessed from the beach and from the neighbouring nature reserve. However, the same is true of much of the holiday park which lies nestled within the dunes. This is part of its charm and while there are places where there is no physical boundary between the affected land and the rest of the application land, having visited the site, it seems to me that it would be evident to most members of the public walking through the dunes that most of the affected land was not part of the nature reserve and that they were instead entering into a more private, intimate space.
2. On balance, while I acknowledge that there may not be evidence of exclusive occupation over every part of the affected land at the date of the application, the combination of stock proof fencing, the intimate situation of the caravans and the various roadways and other areas of the holiday park form a series of natural and manmade enclosures which help distinguish it from the more open and unoccupied areas of the rest of the application land. While I note the views advanced on behalf of Dr Nicholson, I concur with the views of the applicant that, taking all of the evidence into account, this land is occupied and was so at the time of the application
3. Consequently, I consider that, for this reason alone, it should be excluded from registration. However, for reasons similar to those explained above in relation to the application land, I also consider the previous enclosure and exclusive occupation of the land for industrial purposes provides a further reason that it ought not to be registered.

**Other Matters**

1. I note the applicant’s arguments in relation to whether or not land which was formerly waste land of a manor can reacquire its status as waste. However, this is a difficult and rather obscure point of law and one for which there are conflicting authorities. Nevertheless, I am inclined to agree with the views of the chief commons commissioner in the Rush Green, Harleston, Suffolk decision that waste land of a manor is land which has been waste from time immemorial and does not include land which can be shown to have lost its character as waste at a known point in time. As I have made clear above, I consider the application site falls within this category.

**Overall Conclusion**

1. I have found above that the application site is manorial in origin but that there is insufficient evidence to demonstrate, on the balance of probabilities, that it was waste land of a manor in the days when copyhold tenure still existed. Furthermore, even if I am incorrect and the land was once considered to be waste land of a manor, I have also found that its previous use for industrial purposes for a considerable period of time has resulted in it ceasing to qualify for registration as waste land of a manor under Schedule 2.
2. Consequently, for the reasons given above and having had regard to all other matters raised, I conclude that the application should be refused, and the land comprised in the application site ought not to be added to the register of common land.

Rory Cridland

INSPECTOR

**APPEARANCES**

FOR The Applicant

Mr H Craddock The Open Spaces Society

Dr F Kerner The Open Spaces Society

For the Objectors:

Ms C Chorfi (Counsel) on behalf of

St Ives Bay Holiday Park Limited/Away Resorts Objector

Mr & Mrs Penhaligon Objector

Mr A Keast Objector

Mr N Marriott Cornwall Wildlife Trust

Mr E Cutler St Ives Bay Holiday Park Ltd/Away Resorts (Objector)

Mr G Babcock Cornwall Wildlife Trust

For the CRA:

Ms H Rodgers Cornwall Council

Other Parties who spoke at the hearing

Mr M Wright Local resident

Mr T Hill (on behalf of Dr V Nicholson) (Applicant for ref 3099)