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# Application Decision

Site visit held on 10 March 2015

**By Martin Elliott BSc FIPROW**

**An Inspector appointed by the Secretary of State for Environment Food and Rural Affairs**

**Decision date: 07 April 2015**

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## **Application Ref: COM574**

### **Land at Zennor Head**

Register Unit: CL 661

Registration Authority: Cornwall Council

- The application, dated 15 April 2013, is made under paragraph 4(6)(a) of Schedule 2 to the Commons Act 2006 ('the 2006 Act').
  - The application is made by Mr D Coles for Save Penwith Moors.
  - 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 land outlined in red on the plan attached to this decision, with the exception of the land cross hatched red, shall be added to the Commons Register.

## **Preliminary Matters**

2. No objections have been raised to the application to register the relevant land as common land. My decision is based on the documents contained in the file provided by Cornwall Council, which includes the application and associated documents, and on observations made on my site visit.

## **The Application Land**

3. The application land is some 23.416 hectares and forms part of Zennor Head. The land unit is a coastal area of moorland bounded by sea cliffs on the north and west sides.

## **Main Issues**

4. The application has been made in accordance with the provisions of paragraph 4 of Schedule 2 to the 2006 Act. The main issue is whether the land is waste land of a manor and whether before 1 October 2008:
  - (a) the land had been provisionally registered as common land under section 4 of the Commons Registration Act 1965;
  - (b) an objection was made in relation to the provisional registration; and
  - (c) the provisional registration was cancelled in the following circumstances<sup>1</sup>:

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<sup>1</sup> Paragraph 4, subsection (4)(a)(b) and (c) of Schedule 2 of the Commons Act 2006

- i) that the provisional registration was referred to a Commons Commissioner under section 5 of the 1965 Act;
  - ii) the Commissioner determined that the land was not subject to rights of common and for that reason refused to confirm the provisional registration; and
  - iii) the Commissioner did not consider whether the land was waste land of a manor.
5. The onus of proving the case in support of the correction of the register of common land rests with the person making the application, and the burden of proof is the normal, civil standard, namely, the balance of probabilities.

### **Reasons**

#### ***Whether the land had been provisionally registered as common land under section 4 of the Commons Registration Act 1965***

6. The land was provisionally registered as common land unit CL 661 on 3 March 1970 following an application made on 8 August 1969 by Mr W F Lloyd. This is with the exception of an area of land to the south of the application land which did not form part of the application to register the land in 1969. The land forms part of register unit CL 703 which was cancelled under the Rectification of Registers Act 1989. In view of this I have not considered the status of this land further in determining the application.

#### ***Whether an objection was made to the provisional registration***

7. Two objections were raised to the provisional registration of CL 661 as common land (X1025 & X1455).

#### ***Whether the provisional registration was cancelled in the circumstances specified in paragraph 4 (4) of Schedule 2 to the 1965 Act***

8. The provisional registration was referred to a Commons Commissioner who held a hearing into the objections. The Commissioner concluded that the land was not subject to any rights of common. The Commissioner did not consider whether the land was waste land of a manor.

#### ***Whether the land at issue is of a manor***

9. 'Of the manor' is held to mean land which is, or was formerly, connected to the manor<sup>2</sup>.
10. Lake's Parochial History 1868 in respect of the Parish of Zennor refers to the manor of Trevail and the manors of Boswednack, Treen and Trewey. It is also stated that the manor of Trewey became vested in the Gerveys family. The tithe map and apportionment of 1841 identifies that land parcel number 1534, which forms part of the application land, is owned by the Reverend Richard Gerveys. The 15<sup>th</sup> century Penheleg Manuscript, recording the tithings in the Hundred of Penwith, shows the registration unit of CL 661 as being in the manor of Hornwell. A paper of P. A. S. Pool MA FRSA, published in the journal of the Royal Institute of Cornwall<sup>3</sup>, states that the land in question was in the manor of Hornwell.

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<sup>2</sup> Hampshire County Council and others v Milburn (1991)

<sup>3</sup> New Series Volume III, part 3, 1959 [pp. 163-228]

11. Documents held in the County Records Office include a mortgage for a number of landholdings and manors including Hornwell which is stated as being in Zennor and other parishes. A deed of release of mining ground refers to land in Zennor in the manor of Treviddern.
12. The vast majority of land in England is formerly of a manor although it is seldom possible to prove definitely that a particular parcel of land is of a manor. In the absence of any evidence to the contrary, and having regard to the evidence, it is most likely that the application land is land which, on the balance of probabilities, is of a manor.

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

13. The term 'waste land of the manor' has been defined<sup>4</sup> as "...*the open, uncultivated and unoccupied lands parcel of the manor, or open lands parcel of the manor other than the demesne lands of the manor*". The question as to whether land is waste land of the manor is one which must be satisfied at the time of the application.

*Open*

14. Defra's published guidance<sup>5</sup> (Defra guidance) indicates that 'open' means unenclosed. Although the land is bounded on its south eastern boundary by Cornish hedges, the land itself is unenclosed.
15. The applicant makes reference to Natural England's definition of access land and open country. This definition is not relevant in considering whether the land is open in the context of it being waste land of a manor.

*Uncultivated*

16. The land is coastal moorland and is uncultivated.

*Unoccupied*

17. Defra guidance states that land should not be regarded as having ceased to be unoccupied and therefore not waste merely because it is subject to a tenancy, lease or licence whose sole or principal purpose is to enable the land to be grazed. Occupation requires some physical use of the land to the exclusion of others.
18. There is no evidence before me to suggest that the land is occupied to the exclusion of others and I conclude that the land is unoccupied.

**Other Matters**

19. The applicant indicates that the application is being made in the public interest to obtain some public input into the management of the moorland in the West Penwith peninsula. Whilst I note the reasons behind the application this is not a matter which I can take into account in determining the application.

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<sup>4</sup> Attorney General v Hanmer, 1858

<sup>5</sup> Department for Environment Food and Rural Affairs, Guidance to commons registration authorities and the Planning Inspectorate, December 2014

## Conclusion

20. Having regard to these and all other matters raised in the written representations I conclude that, with the exception of the area identified in paragraph 6, the application land fulfils the necessary criteria for registration and consequently I approve the application in part.

*Martin Elliott*

INSPECTOR

